United States Court of Appeals

for the Second Circuit

APPENDIX

75-7532

BRS

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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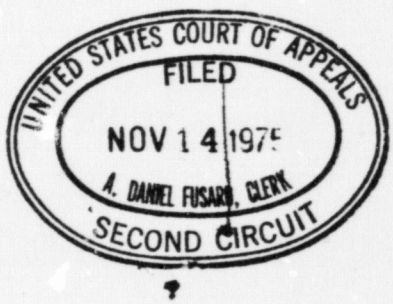
IN THE MATTER OF

AIRSPUR CORPORATION, a/k/a
AIRSPUR, NEW YORK, Bankrupt.

----------x

Appeal from the United States District Court Southern District of New York

Docket No. 75-7532



JOINT APPENDIX

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PAGINATION AS IN ORIGINAL COPY

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PRELIMINARY NOTE TO THE COURT:

Wherever a large asterisk appears on the lower right corner of any page in this appendix, this indicates that an exhibit to the document which follows that page in the original Court paper has been deleted in the interest of brevity and non-duplication. Wherever such asterisk appears, the page immediately following will designate the pages for the Appendix in which said exhibits are printed. Asterisks are found on pages 127a, 173a, 179a, 187a, 286a and 288a.

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RELEVANT DOCKET ENTRIES

Date	Proceeding
October 16, 1974	Notice of Appeal dated September 9, 1974 to District Court of K.R. Cravens Corp., the defendant from the order of Hon. Roy Babitt entered on August 29, 1974 (re: overruling defendant's objections to summary jurisdiction over cross-claims.)
October 16, 1974	Designation of contents for inclusion in record on appeal, etc., by attorneys for defendant K.R. Cravens Corp., dated September 16, 1974.
October 16, 1974	Notice of Appeal dated September 5, 1974 to District Court of Mercantile Commerce Company, a claimant from the order of Bankruptcy Judge dated August 29, 1974, denying claimant Mercantile's motion to dismiss objections to claim, etc.
October 16, 1974	Designation of contents for inclusion in the record on appeal and statement of issues submitted by attorneys for claimant, Mercantile Commerce Co., dated September 16, 1974.
October 16, 1974	Notice of Appeal dated September 6, 1974 to District Court of Bankers Trust Company as trustee from the order of Hon. Roy Babitt dated August 29, 1974, denying the motions of Bankers Trust Company as trustee and other claimants for dismissal of trustee's counterclaims, etc.
October 16, 1974	Designation of contents of record of appeal and issues to be presented on appeal by attorneys for appellant, Bankers Trust Company, dated September 6, 1974.

(RELEVANT DOCKET ENTRIES CONTINUED)

Date	Proceeding
October 16, 1974	Notice of Appeal dated September 4, 1974 to District Court of L.J. Rauth, as trustee, claimant-appellant and Ohio Real Property Inc., defendant-appellant from the order of Hon. Roy Babitt dated August 29, 1974, which denied the motion for Summary Judgment, etc., and denied the motion of L.J. Rauth as trustee, etc.
October 16, 1974	Designation of contents of record on appeal and issues by attorneys for appellants, L.J. Rauth, as trustee, claimant-appellant, and Ohio Real Property Inc., defendant-appellant, dated September 16, 1974.
August 7, 1975	Memorandum-Opinion #42936, ordering that the decision of the Bankruptcy Court is hereby reversed. The matter is remanded to the Bankruptcy Court for further proceedings consistent with this decision. Tenney, J. Dated August 6, 1975.
September 4, 1975	Notice of Appeal by Jerome Lipper to the United States Court of Appeals for the Second Circuit from the Memorandum Decision and Order of the District Court, Tenney, J., (District Judge) entered August 7, 1975, reversing the Bankruptcy Court's decision.

CHRONOLOGICAL LIST OF ADDITIONAL PAPERS FILED WITH THE BANKRUPTCY AND DISTRICT COURTS WHICH ARE PART OF THIS RECORD ON APPEAL

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UNITED STATES DISTRICT COURT
P. [illegible] SOUTHERN DISTRICT OF NEW YORK

In the Matter of	:	
AIRSPUR CORPORATION,	:	In Bankruptcy
a/k/a AIRSPUR NEW YORK,	:	No. 70B577
Debtor.	:	

FILED

SEP 17 1970

ROY BABITT
REFEREE IN BANKRUPTCY

PROOF OF CLAIM
and
POWER OF ATTORNEY

CLAIM NO.

A. A. T. WICKERSHAM, of 280 Park Avenue, New York, in the County of New York, State of New York, being duly sworn, says:

1. I am a Vice President of Bankers Trust Company, a corporation organized and existing under the laws of the State of New York, and carrying on business at 280 Park Avenue, in New York, County of New York, State of New York, and am duly authorized to make this proof of claim on its behalf.

2. Airspur Corporation, the above named debtor, was at and before the filing by it of its petition proposing an arrangement under Chapter XI of the Bankruptcy Act, and still is, justly and truly indebted to the corporation in the sum of One Million Eight Hundred Seventy-Five T[illegible]sand Dollars ($1,875,000.00).

3. The consideration of this debt is as follows: pursuant to an agreement in writing dated July 24, 1969, Bankers Trust Company, as Trustee of various trust funds, purchased from debtor an aggregate of $1,875,000 pri[illegible]pal amount of debtor's 8% notes due August 1, 1974.

P. 2a

4. No part of the debt has been paid.

5. There are no setoffs or counterclaims to the debt.

6. The corporation does not hold, and has not, nor has any person by its order, or to the knowledge or belief of the undersigned, for its use, had or received, any security or securities for the debt. The corporation owns 62,500 shares of common stock in the debtor.

7. The instrument upon which the debt is founded is attached hereto.

8. I do hereby authorizeDavid Hartfield, Jr., of 14 Wall Street, New York, New York; Thomas B. Leary of 14 Wall Street, New York, New York; Peter M. Collins of 14 Wall Street, New York, New York; and A. Lee Lundy, Jr., of 14 Wall Street, New York, New York, or any of them, with full power of substitution, to attend all meetings of creditors of the debtor aforesaid, and all adjournments thereof, at the places and times appointed by the court, and for me and in my name, to vote for or against any proposal or resolution which then may be submitted under the Bankruptcy Act, to vote for a trustee or trustees, or for the nomination of a trustee or trustees of the estate of the said debtor, and for a committee of creditors, to accept any arrangement proposed by said debtor for the settlement, satisfaction, or extension of time for payment of its debts, to reject any altered or modified arrangement proposed by said debtor, and to receive payment or delivery of money or of other consideration due me under such arrangement, and payment of dividends, and for any

other purpose in my interests whatsoever; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court, which may be held therein for any purpose.

Dated at New York, New York this 17th day of September, 1970.

A. A. T. Wickersham

Sworn to before me this
17th day of September, 1970.

Notary Public

ROBERT A. PERKINS
NOTARY PUBLIC, STATE OF NEW YORK
No. 41-8327100 - Queens County
Certificate filed in New York County
Term Expires March 30, 1972

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

A. A. T. WICKERSHAM, being duly sworn, says:

He is an officer, to wit, a Vice President of Bankers Trust Company; that the foregoing Proof of Claim is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

A A T Wickersham

Sworn to before me this
17th day of September, 1970.

[illegible]

ROBERT A. [illegible]
NOTARY PUBLIC, STATE OF NEW YORK
No. 41-8[illegible]60 - Qualified in [illegible]
Certificate filed in [illegible] County
Term Expires March 30, 1972

PURCHASE AGREEMENT, dated as of July 24, 1969 among AIRSPUR CORPORATION, a Delaware corporation (the "Company"), and the persons and institutions signatories hereto and designated as Purchasers in Exhibit A attached hereto (the "Purchasers").

The Company agrees, subject to the terms and conditions set forth herein, to sell to the Purchasers an aggregate of $3,750,000 principal amount of its 8% Notes due five years from the date thereof (the "Notes") and an aggregate of 125,000 shares of its Common Stock, par value $0.10 per share, at a price of $10.00 per share (the "Stock") and the Purchasers agree, subject to the terms and conditions set forth herein, to purchase such aggregate principal amount of the Notes and such aggregate number of shares of Stock. Accordingly, it is hereby agreed as follows:

I. THE PURCHASE

SECTION 1.01. The Company will sell to each of the Purchasers, and each of the Purchasers will buy from the Company, subject to the terms and conditions set forth herein, the principal amount of Notes and the number of shares of Stock set forth opposite its name in Exhibit A attached hereto and incorporated herein by reference. Each Purchaser shall receive a single Note which shall be payable to his order or to his nominee heretofore designated to the Company and shall otherwise be substantially in the form of Exhibit B attached hereto and incorporated herein by reference. Each such Note shall be duly executed on behalf of the Company, with blanks appropriately completed, and shall bear interest (on the basis of a 360 day year) from its date on the unpaid principal amount thereof at a rate

per annum of 8%. Interest on such Notes shall be payable on the 1st day of January, April, July and October, commencing with the first of such dates following the date of such Note. Each payment and redemption (as provided in the Note) of principal of and interest on the Notes shall be made pro rata in accordance with the principal amounts of the Notes outstanding on the same date. Each Purchaser shall also receive a single certificate representing the number of shares of Stock being purchased by him (registered in his name or that of his nominee designated as provided in this Section 1.01). Each such Note and certificate evidencing shares of Stock shall be delivered to such Purchaser against payment by certified or bank cashier's check of the aggregate purchase price for its shares of Stock and its Note, in current New York City Clearing House Funds.

SECTION 1.02. The Closing of the transactions herein contemplated shall take place at the offices of Bankers Trust Company, 280 Park Avenue, New York, New York, at 11 A.M. on July 24, 1969, or on such other business day subsequent thereto as may be agreed upon by the Company and the anticipated holders of at least a majority in principal amount of the Notes (the "Closing Date").

II. INFORMATION ABOUT THE COMPANY

Each of the Purchasers by execution hereof acknowledges receipt of (i) a document entitled "Airspur" prepared by Brooks, Torrey & Scott, Inc. (a present stockholder of the Company), (ii) a document entitled

"Supplementary Report" prepared by the Company, (iii) a balance sheet dated July 8, 1969, of the Company, and (iv) other information, which documents, balance sheet and other information are sufficient in its judgment to enable it to evaluate the Company and its investment therein. Each of the Purchasers understands that the Company has not yet begun operations, and that such documents and other information (including but not by way of limitation the projections contained therein) reflect only the best estimates of the Company and do not constitute representations or warranties by the Company.

III. REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants that:

SECTION 3.01. (a) The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, (b) the Company has the corporate power and authority to carry on its business as is now contemplated, and is or will be qualified to do business in every jurisdiction where such qualification is necessary, (c) the Company has the corporate power and authority to execute and perform this Purchase Agreement, (d) the ownership, direct and beneficial, and control of the Common Stock of the Company are as indicated in Exhibit C attached hereto and incorporated herein by reference under the heading "Original Stockholders" and other than as indicated in such Exhibit C there are on the date hereof no agreements, options, rights or warrants to purchase any security of the Company and (e) the issued and outstanding Common Stock of the Company as of the date of this Purchase Agreement is fully paid and nonassessable.

SECTION 3.02. The execution and performance by the Company of this Purchase Agreement, the execution and delivery of the Notes and the issuance of the Stock have been duly authorized by all requisite corporate action and will not violate any provision of law, any order of any court or other agency of government, the Certificate of Incorporation or By-Laws of the Company or any indenture, agreement or other instrument to which the Company is a party, or by which it or any of its property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Company.

SECTION 3.03. There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending or, to the knowledge of the Company, threatened, against or affecting the Company or any property or rights of the Company.

SECTION 3.04. The Company is not a party to any agreement or instrument or subject to any charter or other corporation restriction materially and adversely affecting its present or proposed business, properties or assets, operations or condition, financial or otherwise. The Company is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party.

SECTION 3.05. The Company has filed or caused to be filed all Federal, state and local tax returns which, to the knowledge of the officers of the Company, are required to be filed, and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due, except as otherwise permitted by Section 5.02 of this Purchase Agreement and except for the 1968 Delaware franchise tax which has been mailed for filing.

SECTION 3.06. The Company does not have any subsidiaries.

SECTION 3.07. Since the date of its incorporation, the Company has not sold or offered for sale any securities of the Company except in pursuance of exemptions under the Securities Act of 1933.

IV. CONDITIONS OF PURCHASE

The obligations of the Purchasers to make the purchases of the Stock and Notes hereunder on the Closing Date are subject to the following conditions precedent:

SECTION 4.01. The representations and warranties set forth in Article III hereof shall be true and correct on and as of the Closing Date with the same effect as if they were made on such date.

SECTION 4.02. Each of the Purchasers shall have received a signed copy of the opinion of Reavis, Pogue, Neal & Rose, counsel for the Company, dated the Closing Date, addressed to the Purchasers and in form and substance satisfactory to Cravath, Swaine & Moore, special counsel for the Purchasers, (a) confirming the accuracy of the representations and warranties set forth in Subsections (a), (b) and (c) of Section 3.01

and in Section 3.02 hereof, (b) confirming, to the best knowledge and belief of said counsel, the accuracy of the representations and warranties set forth in Section 3.03 hereof, (c) to the effect that (i) this Purchase Agreement has been duly executed and delivered by the Company and constitutes the valid and binding obligation of the Company enforceable in accordance with its terms subject, as to enforcement of remedies, to applicable bankruptcy, reorganization, insolvency and similar laws and to moratorium laws from time to time in effect, (ii) the Notes have been duly authorized, executed and delivered by the Company and constitute the valid and binding obligations of the Company enforceable in accordance with their terms (subject, as aforesaid) and (iii) the Stock has been duly authorized and issued by the Company and is fully paid and nonassessable and (d) to the effect that no registration with or approval of or other action by, any Federal, state or other governmental commission or other regulatory body is required in connection with this Purchase Agreement or the issuance of the Notes or the Stock.

SECTION 4.03. All legal matters incident to this Purchase Agreement shall be satisfactory to Cravath, Swaine & Moore, special counsel for the Purchasers and to each of the Purchasers.

SECTION 4.04. As of the Closing Date, no Event of Default specified in Article VII hereof, nor any event which

upon notice or lapse of time or both would constitute such an Event of Default, shall have occurred.

SECTION 4.05. Each of the Purchasers shall have received on the Closing Date (a) a copy of resolutions of the Board of Directors of the Company, certified on the Closing Date, authorizing the execution and delivery of this Purchase Agreement, the borrowing hereunder, the execution and delivery of the Notes and the issuance and sale of the Stock, (b) a certificate dated the Closing Date and signed by the Chairman of the Board or the President of the Company, confirming compliance with the conditions precedent set forth in Sections 4.01 and 4.04 hereof, and (c) such additional supporting documents as the Purchasers or their special counsel may reasonably request.

SECTION 4.06. At or prior to the Closing Date there shall have been executed and delivered an Employment Agreement substantially in the form of Exhibit D attached hereto and incorporated herein by reference between Warren E. Kraemer and the Company (hereinafter called the "Employment Agreement") and an agreement among the Company, all of the present stockholders of the Company and the Purchasers, substantially in the form of Exhibit E attached hereto and incorporated herein by reference (hereinafter called the "Stockholders Agreement").

SECTION 4.07. Each of the Purchasers shall accept delivery of and make payment for the principal amount of Notes and the shares of Stock being purchased by such Purchaser.

V. AFFIRMATIVE COVENANTS

A. The Company covenants and agrees that from the date hereof and until payment in full of the principal of, and interest on, the Notes, unless Purchasers holding at least a majority of the principal amount of the Notes then outstanding shall otherwise consent in writing, it will:

SECTION 5.01. Do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights and franchises and comply with all laws applicable to it· continue to conduct and operate its business when it has commenced operations; at all times maintain, preserve and protect any and all franchises and trade names and preserve any and all of the remainder of its property used or useful in the conduct of its business and keep the same in good repair, working order and condition, and from time to time make, or cause to be made, all needful and proper repairs, renewals, replacements, betterments and improvements thereto, so that, in the reasonable judgment of the Company, any business carried on in connection therewith may be properly and advantageously conducted at all times; and keep its properties adequately insured at all times, and maintain (i) such other insurance, to such extent and against such risks, including fire, as is customary with companies in the same or similar business, (ii) necessary workmen's compensation insurance and (iii) such other insurance as may be

required by law or as may be reasonably required in writing by Purchasers holding at least a majority of the principal amount of the Notes then outstanding.

SECTION 5.02. Pay and discharge or cause to be paid and discharged promptly any and all taxes, assessments, and governmental charges or levies imposed upon it or upon its income and profits, or upon any of its property, real, personal or mixed, or upon any part thereof, before the same shall become in default, as well as all lawful claims for labor, materials and supplies or otherwise which, if unpaid, might become a lien or charge upon such properties or any part thereof; provided, however, that the Company shall not be required to pay and discharge or to cause to be paid and discharged any such tax, assessment, charge, levy or claim so long as the validity thereof shall be contested in good faith by appropriate proceedings and the Company shall have

set aside on its books adequate reserves with respect to any such tax, assessment, charge, levy or claim, so contested.

SECTION 5.03. Furnish

(a) quarterly to each of the Purchasers a certificate signed by the Chairman of the Board or the President of the Company to the effect that no Event of Default specified in Article VII hereof, nor any event which, upon notice or lapse of time or both, would constitute such an Event of Default, has occurred;

(b)(i) within 90 days after the end of each fiscal year a balance sheet and income and surplus statements, showing the financial condition of the Company and its subsidiaries as of the close of such year and the results of their operations during such year, the foregoing financial statements to be certified by independent public accountants selected by the Company and acceptable to Purchasers holding at least a majority of the principal amount of the Notes at the time outstanding (the form of such statements and of such certification to be acceptable to Purchasers holding such principal amount of the Notes); and (ii) within 30 days after the end of each calendar quarter, a balance sheet and income and surplus statement of the Company and its subsidiaries as of the end of each such quarter and for the then elapsed portion of the fiscal year of the Company, certified by the chief financial officer of the Company (the form of such statements and of such certification to be acceptable to the Purchasers holding such principal amount of the Notes); and

(c) promptly, from time to time, such other information regarding the operations, business, affairs and financial condition of the Company and its subsidiaries as any of the Purchasers may reasonably request.

SECTION 5.04. In the event that pursuant to Paragraph 3 of the Employment Agreement, Mr. Kraemer has obtained the consent of the new chief operating officer to enter into a contract similar to the Employment Agreement, the Company will not enter into such a contract without the approval of the holders of at least a majority in principal amount of the Notes then outstanding.

VI. NEGATIVE COVENANTS

The Company covenants and agrees that from the date hereof and until payment in full of the principal of, and interest on, the Notes, unless Purchasers holding at least a majority of the principal amount of the Notes at the time outstanding shall otherwise consent in writing, it will not, either directly or indirectly:

SECTION 6.01. Enter into any arrangement, directly or indirectly, with any person whereby the Company shall sell or transfer any material property, real or personal, and used and useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property which the Company intends to use for substantially the same purpose or purposes as the property being sold or transferred.

SECTION 6.02. Declare or pay any dividend on, or make any other distribution with respect to (whether by reduction of capital or otherwise), any shares of its capital stock, or purchase, redeem, retire or otherwise acquire for value any shares of the Company's capital stock.

SECTION 6.03. Issue any shares for cash (including Treasury Shares) of its capital stock (other than the Stock) unless the consideration received for such stock by the Company shall be more than $10 per share, except that the Company may issue 12,500 shares of its Common Stock reserved for issuance upon exercise of Warrants which may be granted to Auchincloss, Parker, Redpath and several other persons and valid through April 1, 1974.

VII. DEFAULTS

In case of the happening of any of the following events (herein sometimes called "Events of Default"):

(a) any representation or warranty made herein or in any report, certificate, financial statement or other instrument furnished in connection with this Purchase Agreement or the purchase hereunder shall prove to be false or misleading in any material respect on the Closing Date;

(b) default in the payment of the principal of any Note, when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for redemption or by acceleration or otherwise;

(c) default in the payment of interest on any Note, when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for redemption or by acceleration or otherwise, and such default shall continue for a period of 30 days;

(d) default in the due observance or performance of any covenant, condition or agreement on the part of the Company contained in Article VI hereof;

(e) default in the due observance or performance of any other covenant, condition or agreement on the part of the Company to be observed or performed pursuant to the terms hereof and such default shall continue unremedied for 30 days after written notice thereof to the Company by any Purchaser or Purchasers holding at least 10% of the principal amount of the Notes at the time outstanding;

(f) default shall be made with respect to any indebtedness of the Company (other than the Notes), if the effect of such default is to accelerate the maturity of such indebtedness or to permit the holder thereof to cause such indebtedness to become due prior to the stated maturity thereof or if any indebtedness of the Company or any subsidiary is not paid, when due and payable, whether at the due date thereof or at a date fixed for prepayment or otherwise;

(g) the Company or any subsidiary shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator for it or for any of its property, (ii) admit in writing an inability to pay its debts, as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent or (v) file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law or statute or if corporate action shall be taken by the Company or any subsidiary for the purpose of effecting any of the foregoing;

(h) an order, judgment or decree shall be entered, without the application, approval or consent of the Company or any subsidiary by any court of competent jurisdiction, approving a petition seeking reorganization of the Company or any subsidiary or appointing a receiver, trustee or liquidator of the Company or any subsidiary or of all or a substantial part of the assets thereof, and such order, judgment or decree shall continue unstayed and in effect for any period of 60 days;

(i) final judgment for the payment of money in excess of $25,000 shall be rendered against the Company or any subsidiary and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed;

(j) Mr. Warren Kraemer shall breach his employment contract or, during the time that he is chief operating officer of the Company as provided in the Employment Agreement, he shall die or become disabled or incapacitated to the extent described therein or, the person who succeeds him as chief operating officer shall breach his Employment Agreement, if any, or he shall die or become disabled or incapacitated to the extent described therein; or

(k) The Group A Stockholders (as defined in the

Stockholders Agreement), or the Company, or any new Stockholders becoming a party thereto after the date thereof shall breach any of the provisions of the Stockholders Agreement;

then, and in every such event and at any time thereafter during the continuance of such event, Purchasers holding at least a majority in principal amount of the Notes then outstanding may, by written notice to the Company,

declare the entire principal amount of the Notes to be due and payable forthwith, whereupon such Notes shall forthwith become due and payable, both as to principal and interest, without presentment, demand, protest, or notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Notes to the contrary notwithstanding. If the Company has knowledge of any such event, it shall forthwith notify each of the Purchasers in writing thereof.

VIII. MATTERS UNDER THE SECURITIES ACT OF 1933

SECTION 8.01. Each of the Purchasers prior to making any disposition of its Note and/or any shares of its Stock, will give prior written notice to the Company describing briefly the manner in which any proposed disposition is to be made. The Company will, upon receipt of any such notice, use its best efforts, in consultation with counsel for such Purchaser, to ascertain as promptly as possible whether or not registration under the Securities Act of 1933, as amended (the "1933 Act") (or perfection of an exemption) is required and will advise such Purchaser promptly in writing with respect thereto.

SECTION 8.02. Each of the Purchasers represents to the Company that the Note and the shares of Stock being purchased by it are being acquired for investment and not for the purpose of or with a view to the distribution or resale thereof, and agrees that it will not sell or otherwise transfer such Note or any of such shares unless (a) in the case of the Stock, pursuant to an effective registration statement under the 1933 Act, or (b) in the case of the Stock and the Notes, there has been delivered to the Company an opinion of Messrs. Reavis, Pogue, Neal & Rose or other

counsel acceptable to the Company, which opinion shall be in form and substance reasonably satisfactory to the Company, to the effect that such sale or other transfer may be effected pursuant to an exemption or in compliance with the 1933 Act and other applicable federal requirements (which opinion may be conditioned upon a representation by the proposed transferee that he or it is acquiring the Note or the shares of Stock for his or its account for investment and not with a view to, or for sale in connection with, any distribution thereof, and that he or it has no present intention of distributing or reselling such Note or any of such Stock).

SECTION 8.03. Each Note and each certificate representing shares of Stock shall bear a legend to the effect that any sale or other transfer thereof is subject to the provisions of the 1933 Act and to the terms and provisions of this Purchase Agreement; provided, however, that whenever any Note or Stock becomes free of the restrictions imposed by this Agreement, including the provisions relating to the 1933 Act, then such legend shall be removed.

SECTION 8.04. On any occasion when the Company shall propose to register any shares of its Common Stock under the 1933 Act, the Company will give each Purchaser written notice of its intention to effect such registration. If any Purchaser shall, within 30 days of receipt of such notice, request the Company to register any of the shares of Stock then held by the Purchaser, the Company will, at its sole cost and expense (except that such Purchaser shall pay the SEC registration fee applicable to his shares of Stock being registered) promptly take action to include in the registration statement being filed by it such Stock and will use its best efforts to the

end that the registration of such shares of Stock shall become and remain effective to the same extent that the registration of the other Common Stock being registered shall become and remain effective. If any such registration statement is filed, the Company will also use its best efforts to qualify any shares of Stock of any Purchaser covered thereby under such state securities laws as the Purchaser or Purchasers requesting registration may reasonably request except that it shall not be required in connection therewith, or as a condition thereof, to execute a general consent to service or to qualify to do business in any such state. The Company will not be required to maintain such registration under the 1933 Act in effect for more than 60 days.

SECTION 8.05. (a) If at any time a Purchaser shall desire to make a disposition of any of its Stock and if the Company, after consultation with counsel for such Purchaser as provided in Section 8.01 above, shall determine that registration (or perfection of an exemption) is necessary to permit such disposition, and, subject to the rights of The Value Line Special Situations Fund, Inc. ("Value Line"), one of the Purchasers, set forth in paragraph (c) of this Section 8.05, if such Purchaser, and at least one other Purchaser, who together with such Purchaser own at the time at least 30% of the Stock, or Bankers Trust Company, one of the Purchasers, if it desires to register all of the Stock purchased

by it hereunder (any such Purchaser being hereinafter called "Participating Purchaser"), so request by written notice to the Company (and by written notice to each of the other Purchasers who may, within seven days from the time of receipt of such notice, by further written notice to the Company include any or all of their Stock in the registration described below upon the terms of this Section 8.05 and any such Purchaser giving such notice to the Company shall be included within the term Participating Purchaser):

(i) the Company will, as promptly as practicable, prepare and file with the Securities and Exchange Commission (the "SEC") an appropriate registration statement (which term shall be deemed to include a Notification and Offering Circular pursuant to Regulation A promulgated under the 1933 Act, when necessary to perfect an exemption under the 1933 Act) which registration statement may cover securities of the Company other than the Stock requested to be registered and will use its best efforts to have such registration statement declared effective;

(ii) the Company will notify the Participating Purchasers, as soon as practicable after it receives notification thereof, of the time when such registration statement has become effective or any supplement to any prospectus forming part of such registration statement has been filed;

(iii) the Company will notify the Participating Purchasers promptly of any request by the SEC for the amendment or supplementation of such registration statement or prospectus or for additional information in connection therewith;

(iv) if, in the opinion of its counsel, any supplementary or periodic information, documents or reports or post-effective amendments are required by the 1933 Act with respect to such registration statement, the Company will advise the Participating Purchasers to that effect and will prepare and file any and all such information, documents and reports and post-effective amendments;

(v) the Company will not file any amendment or supplementation of such registration statement or prospectus or additional information in connection therewith relating to information respecting the Participating Purchasers to which any such Participating Purchaser reasonably

objects in writing within seven days after having been furnished with a copy thereof;

(vi) the Company will advise the Participating Purchasers promptly by telephone or telegraph and confirmed in writing immediately thereafter in the event that it receives notice or obtains knowledge of the issuance of a stop order by the SEC suspending the effectiveness of any such registration statement or of the initiation or threat of any proceeding for that purpose and will, during the period for which the Company is required by this Purchase Agreement to maintain such registration statement in effect, promptly use its best efforts to prevent the issuance of any stop order and to obtain the withdrawal of any stop order in the event that one is issued;

(vii) the Company will use its best efforts to qualify the Stock requested to be registered for sale under the securities laws of such states as any Participating Purchaser may designate, except that it shall not be required in connection therewith, or as a condition thereof, to execute a general consent to service or to qualify to do business in any such state; and

(viii) the Company will furnish to each Participating Purchaser as soon as available copies of any such registration statement and prospectus, and any amendment or supplementation of such registration statement and prospectus and any additional information in connection therewith required to be prepared pursuant to the foregoing provisions of this Section 8.05, all in such quantities as such Participating Purchaser may from time to time reasonably request;

provided, however, that except in the case of Value Line (i) the Company's obligations under this Section 8.05 shall not become applicable until one

year has elapsed from the Closing Date of this Purchase Agreement, and (ii) the Company shall not be required to maintain such registration statement in effect for more than sixty days from its initial effective date.

(b) Subject to the provisions of paragraph (c) of this Section 8.05, the Company agrees to pay all the costs and expenses incidental to the performance of its obligations under paragraph (a) of this Section 8.05, including

(i) the fees and expenses of its counsel, the fees and expenses of its accountants and all other costs and expenses incident to the preparation, printing and filing under the 1933 Act of any such registration statement, and prospectus and all amendments and supplementation of such registration statement and prospectus and any additional information in connection therewith;

(ii) the costs incurred in connection with the qualification of the Stock to be registered under the laws of various jurisidictions pursuant to the provisions of subparagraph (vii) of paragraph (a) of this Section 8.05, including fees and disbursements of its counsel;and

(iii) the costs of furnishing to the Participating Purchasers requesting registration a reasonable number of copies of any such registration statement and prospectus and all amendments and supplementation of such registration statement and prospectus and any additional information in connection therewith.

(c) Notwithstanding anything to the contrary in paragraph (b) of this Section 8.05, the Company shall be obligated to bear the costs set

out in such paragraph (b) in respect of only two registrations of Stock under the 1933 Act required to be effected by the Company by reason of the provisions of paragraph (a) of this Section 8.05 (subject to the limitation set forth in the next sentence of this paragraph (c)), provided, however, that any exercise or nonexercise of the rights of any Purchaser to have any or all of its Stock included in a registration under the 1933 Act in pursuance of the provisions of such paragraph (a) of the Purchase Agreement shall not affect or abridge the further rights of such Purchaser under Section 8.04 hereof and under paragraph (a) of this Section 8.05 read with the foregoing provisions of this paragraph. If more than two registrations are requested under such paragraph (a), each of the Purchasers participating in any such registration will reimburse the Company for its pro rata share of all costs and expenses of every kind (including without limitation, registration fees, legal and accounting fees and expenses and printing bills) which the Company may incur in connection with such registration, and any Purchaser who participates in the first registration requested under such paragraph (a) shall similarly bear its pro rata share of such costs and expenses if it participates in the second such

registration. Notwithstanding any provision to the contrary contained herein, after the earlier of (a) the completion of the second registration pursuant to paragraph (a) of this Section 8.05 or (b) four years from the date of this Agreement, any Purchaser may request registration of any of its Stock pursuant to such paragraph (a), and any Purchaser or Purchasers participating in such registration will reimburse the Company for its pro rata share of all costs and expenses of every kind (including without limitation, registration fees, legal and accounting fees and expenses and printing bills) which the Company may incur in connection with such registration.

(d) Notwithstanding the requirement of paragraph (a) of this Section 8.05 that Purchasers holding a minimum of 30% of the Stock are needed to obligate the Company to file a registration statement under such paragraph and notwithstanding the requirement in such paragraph (a) that one year must elapse before the rights of the Purchasers mature thereunder, Value Line shall have the separate right at any time from the date hereof to cause the Company to file a registration statement under such paragraph (a), and the rights of Value Line thereunder shall be deemed to include its Note, all as

if so specified therein, and the remaining terms of this Article VIII shall be deemed to include any registration of its Note.

(e) If Value Line requests a registration of its Stock or Note prior to the end of the first year after the Closing Date, such request shall not affect or abridge the rights of the other Purchasers under this Article VIII.

SECTION 8.06. Each Purchaser requesting registration of Stock agrees to cooperate with the Company in the preparation and filing of any such registration statement and prospectus and amendment or supplementation of such registration statement or prospectus and any additional information in connection therewith or, as the case may be, in any efforts which the Company may think appropriate to establish that a proposed disposition is exempt under the 1933 Act, including any efforts of the Company to obtain a "no action" letter from the SEC.

SECTION 8.07. In connection with any registration under Section 8.05(a) hereof, the Purchasers holding a majority of the number of shares of Stock to be covered by such registration may, by notice in writing within ten business days subsequent to the date on which the Company has received notice of its obligation to file a registration statement,

for purposes of such registration require a split of the Common Stock of the Company.

SECTION 8.08. The Company will:

(a) indemnify and hold harmless each Participating Purchaser and any underwriter (as defined in the 1933 Act) for such Purchaser in connection

with any registration statement filed in pursuance of this Purchase Agreement and each person, if any, who controls such Purchaser or such Purchaser's underwriter within the meaning of the 1933 Act (but in the case of an underwriter or a controlling person or any of them or of an underwriter of such Purchaser, only if he indemnifies the persons mentioned in Section 8.09 hereof in the manner set forth therein), against any losses, claims, damages or liabilities, joint or several, to which such Purchaser or such underwriter or any such controlling person or any of them may become subject, whether under the 1933 Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) (i) are caused by any untrue statement or alleged untrue statement of any material fact contained, on the effective date thereof, in any registration statement under which any of the shares of Stock were, pursuant to any of the provisions of this Article VIII, registered under the 1933 Act, any prospectus authorized for use in connection therewith, or any amendment thereof or supplement thereto; or (ii) arise out of, or are based upon, any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statement

therein not misleading; and

(b) reimburse such Purchaser, such underwriter, and each such controlling person, for any legal or other expenses reasonably incurred by such Purchaser, or by such underwriter, or by such controlling person, in connection with investigating or defending any such loss, claim, damage, liability or action;

provided, however, that the Company will not be liable under this Section 8.08 in any case to the extent that any loss, claim, damage, expense or liability arises out of, or is based upon, an untrue statement or alleged omission so made in conformity with written information furnished by such Purchaser or such underwriter or such controlling person specifically for use in the preparation of such registration statement or prospectus contained therein or amendment thereof or supplement thereto or additional information in connection therewith.

SECTION 8.09. Each Participating Purchaser will -

(a) indemnify and hold harmless the Company, each of its directors, each of its officers who have signed any registration statement, and each person, if any, who controls the Company within the meaning of the 1933 Act, against any losses, claims, damages or liabilities to which the Company or any such director, officer or controlling person may become subject, whether under the 1933 Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) (i) are caused by any untrue statement or alleged untrue statement of any material fact contained in any registration statement under which any of the shares of Stock were, pursuant to any of the provisions of this Article VIII, registered under the 1933 Act, any prospectus contained in such registration statement, or any amendment thereof or supplement thereto or any additional information in connection therewith; or (ii) arise out of, or are based upon, any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements

contained therein not misleading; in each case to the extent, but only to the extent, that such untrue statement, or alleged untrue statement, or omission, or alleged omission, was so made in reliance upon, and in conformity with, written information furnished by such Purchaser specifically for use in the preparation of such registration statement or prospectus contained therein or amendment thereof or supplement thereto or any additional information in connection therewith; and

(b) reimburse any legal or other expenses reasonably incurred by the Company or any such director, officer or controlling person in connection with investigating or defending any such loss, claim, damage, liability or action.

SECTION 8.10. Promptly after receipt by an indemnified party pursuant to the provisions of Sections 8.08 and 8.09 hereof of notice of the commencement of any action, such indemnified party will, if a claim thereof is to be made against the indemnifying party pursuant to the provisions of either of such Sections, notify the indemnifying party of the commencement thereof; the omission so to notify the indemnifying party will relieve it from any liability which it has to any indemnified party under such provisions, but the omission so to notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party otherwise than under such provisions. In the event that any such action is brought against any indemnified party, and it duly notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate in, and to the extent

that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense of such action, with counsel satisfactory to such indemnified party, and the indemnifying party will not be liable to such indemnified party for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense of such action other than reasonable costs of investigation.

SECTION 8.11. In the event that the Purchasers acquire any additional Common Stock of the Company by reason of any stock split or the payment of any stock dividend, upon any of the Common Stock, or any such Common Stock is exchanged for any other shares, then in either such event such additional or other shares shall, for the purposes of all the foregoing provisions of this Article be deemed to be, and shall be treated as though they were, entitled to all rights attributable to the Stock.

SECTION 8.12. If at any time Value Line shall have the opportunity to purchase any voting securities of the Company now or hereafter authorized and desires to make such purchase, the Company agrees to use its best efforts to assist Value Line in obtaining any clearance necessary from the SEC to enable Value Line to make such a purchase.

IX. MISCELLANEOUS

SECTION 9.01. Any notices shall be conclusively

deemed to have been received by a party hereto and be effective on the day on which delivered to such party at the address set forth below (or at such other address as such party shall specify to the other parties in writing), or, if sent by registered mail, on the second business day after the day on which mailed to such party at said address.

In the case of notices to the Company

Airspur Corporation
Suite 509
10 Rockefeller Plaza
New York, New York

If to any Purchaser, such notice shall be sent to the address of such Purchaser set forth in Exhibit A hereto.

SECTION 9.02. This Purchase Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by the Purchasers of the purchases contemplated hereby and the execution and delivery of the Notes and the issuance and sale of the Stock and shall continue in full force and effect with respect to a given Purchaser as long as he holds any Note which is outstanding and unpaid, provided, however, that the rights of each Purchaser under Article VIII shall survive so long as such Purchaser shall own shares of Stock and the indemnity provisions therein with respect to both the Company and the Purchasers shall survive any sale of Stock. Whenever in this Purchase Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

SECTION 9.03. Each of the Purchasers, other than persons present or represented by duly authorized officials at the closing hereunder, appoints Auchincloss, Parker & Redpath of Two Broadway, New York, New York, as its agent for the purpose of delivering to the Company this

Purchase Agreement and the purchase price of the Note and the Stock which such Purchaser has agreed to purchase, and for the purpose of accepting delivery on the undersigned's behalf from the Company of such Note and Stock and all documents and papers required to be delivered by the Company to such Purchaser hereunder.

SECTION 9.04. Each of the Purchasers represents that it is duly authorized and has full authority to enter into and act in accordance with this Purchase Agreement.

SECTION 9.05. The Company will pay the reasonable fees of the special counsel of the Purchasers, Cravath, Swaine & Moore, plus the disbursements of said counsel.

SECTION 9.06. This Purchase Agreement and the Notes shall be construed in accordance with and governed by the laws of the State of Delaware.

SECTION 9.07. No modification or waiver of any provision of this Purchase Agreement or of the Notes nor consent to any departure by the Company therefrom shall in any event be effective unless the same shall be in writing, and then such waiver of consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Company in any case shall entitle the Company to any other or further notice or demand in the same circumstances.

SECTION 9.08. The Company and each of the Purchasers agree that the remedy at law for breach of the provisions of this Purchase Agreement will be inadequate and that each shall be entitled, in addition to any remedy at law to which

it may be entitled, to temporary or permanent injunctive or mandatory relief without the necessity of proving damage.

SECTION 9.09. Neither any failure nor any delay on the part of any Purchaser in exercising any right, power or privilege hereunder or under the Notes shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege.

SECTION 9.10. (a) The term "business day" shall mean any day not a Saturday, Sunday or legal holiday in the State of New York, and (b) "subsidiary" shall mean any corporation of which more than 50% of the voting stock, entitling the holders thereof to elect a majority of the Board of Directors, managers or trustees thereof, at the time it owned or controlled, directly or indirectly by the Company and/or one or more subsidiaries of the Company. Should any interest payment fall due upon a Saturday, Sunday or legal holiday under the laws of the State of New York, such payment date shall be extended to the next succeeding business day.

SECTION 9.11. This Purchase Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement, and shall become effective on the date when copies hereof, which, taken together, bear signatures on behalf of all the Purchasers and the Company shall have been received by the Company.

IN WITNESS WHEREOF, the Company and each of the Purchasers shall have or shall have caused this Purchase Agreement to be duly executed by their duly authorized officers, all as of the day and year first above written.

AIRSPUR CORPORATION

[CORPORATE SEAL]

By WARREN E. KRAEMER

Attest:

B. V. BROOKS, JR.
Secretary

BANKERS TRUST COMPANY,
as Trustee of various trust funds

By A. T. WICKERSHAM
Vice President

MERCANTILE COMMERCE COMPANY

By JOHN FOX
V.P.-Treas.

THE VALUE LINE
SPECIAL SITUATIONS FUND, INC.

By DAVID HUXLEY
Secretary

CHEMICAL BANK,
as Trustee of the Chemical Bank
New York Trust Company Commingled
Employee Benefit Special Fund

By JOHN H. MILLER
Pension Trust Officer

BEECHMONT COMPANY, as Agent

LEONARD ANDREWS
By
Attorney-in-fact

THE DIEBOLD TECHNOLOGY VENTURE FUND, INC.

By GEORGE PRATT
President

OHIO REAL PROPERTY, INC.

By K. R. CRAVENS

D. B. GLYNN & COMPANY

By JOS. A. GLYNN, JR.

RAYMOND E. ROWLAND [L.S.]
Raymond E. Rowland

EXHIBIT A

PURCHASERS	Principal Amount of Notes	Shares of Common Stock
Bankers Trust Company As Trustee of Various Trust Funds 16 Wall Street New York, N. Y. 10015	$1,875,000	62,500
Mercantile Commerce Company 721 Locust Street St. Louis, Missouri 63101	375,000	12,500
The Value Line Special Situations Fund, Inc. 5 East 44th Street New York, N. Y.	375,000	12,500
Chemical Bank, as Trustee of the Chemical Bank New York Trust Company Commingled Employee Benefit Special Fund 277 Park Avenue New York, N. Y.	375,000	12,500
Beechmont Company, as Agent 39 Broadway New York, N. Y. 10006	300,000	10,000
The Diebold Technology Venture Fund, Inc. 430 Park Avenue New York, N. Y. 10022	187,500	6,250
Ohio Real Property, Inc. 710 Orange Street Ashland, Ohio 44805	112,500	3,750
D. B. Glynn & Company 1536 Railway Exchange Bldg. St. Louis, Missouri 63101	75,000	2,500
Raymond E. Rowland 7701 Forsythe Boulevard Clayton, Missouri 63105	75,000	2,500

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No..... $.....

AIRSPUR CORPORATION

New York, New York

FIVE YEAR, EIGHT PER CENT NOTE

DUE_____

AIRSPUR CORPORATION, a corporation organized and existing under the laws of the State of Delaware (herein called the "Corporation") for value received hereby promises to pay to

..... or his registered assigns five years from date hereof (unless before that date this note shall have been called for redemption and provision made for the payment of the redemption price hereof) the principal sum of DOLLARS ($) with interest thereon from the date of issue at the rate of eight per cent (8%) per annum payable at the office of the Corporation, New York, New York in quarterly installments on the first day of January, the first day of April, the first day of July and the first day of October following the date hereof.

This note is one of an authorized issue of five year eight per cent notes of the Corporation limited to the aggregate principal amount of Three Million Seven Hundred and Fifty Thousand Dollars ($3,750,000), all of like tenor except as to denomination.

All of the notes of this issue rank equally and ratably without priority of any of said notes over any others by reason of date or priority in time of the issue or negotiation thereof or otherwise.

This note is not transferable by endorsement or otherwise than by surrender hereof for cancellation and the issue of a new note of like tenor in the name of the transferee and the registration of the transfer upon the books kept by the Corporation for that purpose at its principal office in the City and State of New York; the Company hereby agreeing at any time and from time to time to make transfers of this note as directed by the above named payee and to issue new notes of similar tenor in the aggregate principal amount of the then unpaid principal hereon.

This note is redeemable at any time prior to maturity by the Corporation at its option as a whole or from time to time in part upon at least thirty (30) days notice at the principal amount thereof plus accrued interest to the date fixed for redemption. Such notice to be by mail and to be addressed to the holder thereof at the address as indicated in the books of the Corporation. If this note shall be called for redemption and payment of the redemption price shall be duly provided by the Corporation, interest shall cease to accrue hereon from and after the date for redemption fixed in the notice thereof.

The Corporation will not pay any dividends upon any share of stock of the Corporation, unless all interest due on or prior to the date of the payment of any dividend on the notes of this issue shall have been or be paid in full.

This note is the corporate obligation of the Corporation only and no recourse shall be had for the payment of the principal of this note or the interest hereon, against any present, past or future stockholder, officer or director of the Corporation, either directly or indirectly through the Corporation by virtue of any statute or the enforcement of any assessment or otherwise; all such liability of said stockholders, directors and officers, as such, being released by the registered owner hereof by the acceptance of this note and as part of the consideration of the issue hereof.

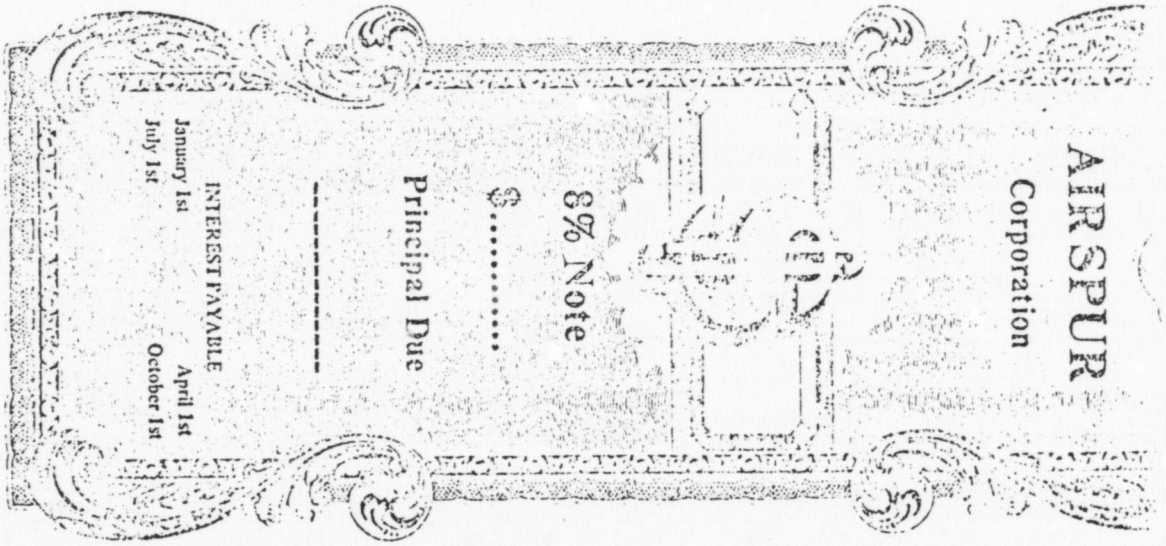
IN WITNESS WHEREOF, AIRSPUR CORPORATION, New York, New York, has caused its corporate seal to be affixed hereto, attested by its secretary or assistant secretary and these presents to be signed in its name by its president or vice president, all as of the ..... day of ..... 1969.

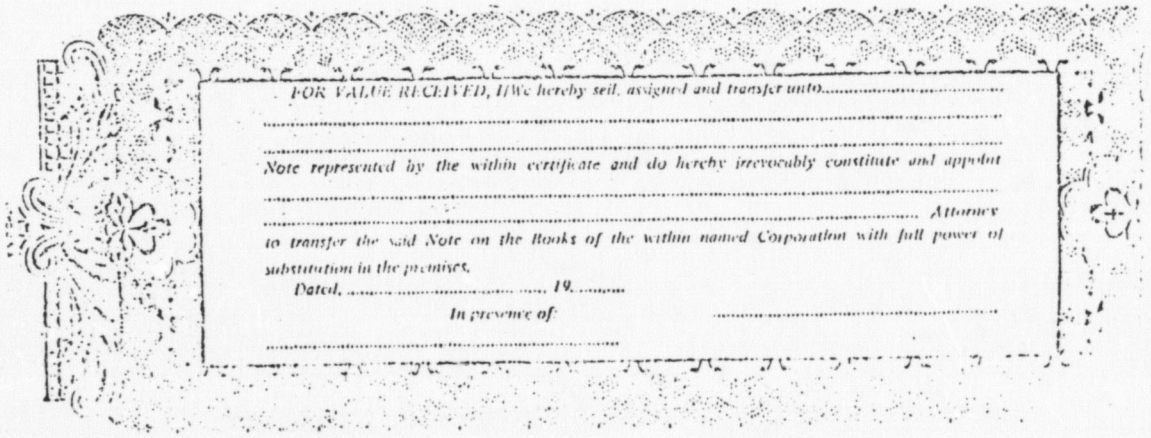
AIRSPUR CORPORATION

By:.....
President

Attest.

.....
Secretary


AIRSPUR
Corporation
8% Note
$.....
Principal Due
INTEREST PAYABLE
January 1st
July 1st
April 1st
October 1st


FOR VALUE RECEIVED, I/We hereby sell, assigned and transfer unto
Note represented by the within certificate and do hereby irrevocably constitute and appoint
Attorney
to transfer the said Note on the Books of the within named Corporation with full power of substitution in the premises.
Dated, ... 19.....
In presence of:

Capitalization of Airspur Corporation Upon Sale of 125,000 Shares of Common Stock

Authorized, Issued and Outstanding		
Original Stockholders:		
Warren E. Kraemer Associates, Inc.	62,500	
B. V. Brooks, Jr.	50,000	
Brooks, Torrey & Scott, Inc.	12,500	
Total	125,000	
Purchasers:		
Bankers Trust Company, as Trustee of various trust funds	62,500	
The Value Line Special Situations Fund, Inc.	12,500	
The Diebold Technology Venture Fund, Inc.	6,250	
Mercantile Commerce Company	12,500	
Ohio Real Property, Inc.	3,750	
Raymond E. Rowland	2,500	
Beechmond Company, as Agent	10,000	
Chemical Bank, as Trustee of the Chemical Bank New York Trust Company Commingled Employee Benefit Special Fund	12,500	
D. B. Glynn & Company	2,500	
Total	125,000*	
Total issued and outstanding		250,000
Authorized and Issued but Not Outstanding	75,001**	75,001
Authorized and Unissued	174,999***	174,999
Total authorized		500,000

* THE PARTIES AGREE THAT IF, AT THE TIME FIXED FOR THE DELIVERY OF THESE SHARES TO THE PURCHASERS, ALL SUCH SHARES ARE NOT SUBJECT TO AGREEMENTS PROVIDING FOR THE PURCHASE OF SUCH SHARES, EITHER PARTY TO THE FOREGOING PURCHASE AGREEMENT MAY RESCIND ITS OBLIGATIONS AND COMMITMENTS THEREUNDER WITHOUT ANY LIABILITY TO ANY PERSON.

** Treasury shares. These shares result from the repurchase by the Corporation from the above-named Original Stockholders and from Robert E. Wieland upon his resignation as Director and President of the Corporation as of March 6, 1969.

*** 12,500 shares reserved for issue upon exercise at $10.00 per share of warrants which may be granted to Auchincloss, Parker & Redpath and several other persons and valid through April 1, 1974.

EXHIBIT D

AGREEMENT made as of July 24, 1969, between AIRSPUR CORPORATION, a Delaware corporation (the "Company") and WARREN E. KRAEMER ("Mr. Kraemer")

WHEREAS:

(1) The Company desires to retain the services of Mr. Kraemer in the capacity or capacities, for the period and on the terms and conditions hereinafter provided; and

(2) Mr. Kraemer is willing, for the considerations herein provided, so to be retained.

NOW, THEREFORE, the Company and Mr. Kraemer do hereby mutually agree as follows:

1. The Company shall, subject to the provisions set forth below, employ Mr. Kraemer in an executive capacity as described in Paragraph 2 hereof for the period (the "Employment Period") commencing on the date hereof and ending on the earliest of (i) five years from the date hereof, (ii) the date of his disability or incapacity, or (iii) at the option of the Company and on written notice by the Company to Mr. Kraemer, the date of his breach of any of his obligations undertaken hereunder, in such locations in the United States as the Company elects at an annual rate of compensation as described in such Paragraph 2; provided that the Company and Mr. Kraemer may extend the Employment Period to such later date as may be mutually agreed upon. Mr. Kraemer agrees to submit to medical examination at any time during the Employment Period on the reasonable request of the Company for the purpose of determining his disability or incapacity. He shall be deemed to be disabled or incapacitated if he is or is likely to be

unable fully and efficiently to perform his duties hereunder for a period of at least six months, as determined by a physician designated by the Company and a physician designated by Mr. Kraemer, and if such physicians are unable to agree, they shall designate a third physician, whose determination shall be final and binding.

2. Mr. Kraemer hereby accepts such employment for the Employment Period.

It is understood by Mr. Kraemer and the Company that, during the Employment Period, Mr. Kraemer will act as chief executive officer of the Company, with the title of Chairman of the Board. For an undetermined period commencing with the date hereof Mr. Kraemer will also act as chief operating officer of the Company which period shall terminate at that time when a person has been hired by the Company to assume his role and responsibilities as chief operating officer of the Company and when such person, in the judgment of Mr. Kraemer and the Company, has developed the abilities and had sufficient experience to assume such role and responsibilities. Mr. Kraemer will be compensated at an annual rate of $24,000 during the period in which he acts as chief operating officer of the Company and, thereafter, at an annual rate of $12,000. During the Employment Period Mr. Kraemer will take no action or engage in any activity which is materially adverse to the best interests of the Company or its affiliates. Mr. Kraemer will so conduct himself during the Employment Period that in every way the best interest of the Company shall be served.

3. When a new chief operating officer is designated by the Company, Mr. Kraemer will use his best efforts to cause such person to enter into an employment contract substantially similar to this Agreement and which shall also provide that such person shall faithfully and efficiently devote his full business time to the affairs of the Company.

4. Mr. Kraemer (and Warren E. Kraemer Associates, Inc., one of the shareholders of the Company, so long as Mr. Kraemer is a controlling person thereof) will not at any time during the Employment Period, without the consent of the Company, be paid or employed by, or have a substantial equity interest in, or serve as an officer or director of, any competitor of the Company or its affiliates, or during the Employment Period or thereafter disclose any confidential data or information with respect to the Company or its affiliates to any competitor or any other person not authorized by the Company to receive such data or information.

5. Any right of Mr. Kraemer under this Agreement is conditional on his full and complete performance to the date of the exercise of such right of all his undertakings hereunder.

6. If the Company merges into or consolidates with another corporation or sells substantially all its assets and business to another corporation, or substantially all the assets and business of the Company are otherwise transferred to another corporation, this Agreement shall be binding on such successor corporation and shall continue to be binding on Mr. Kraemer for the benefit of such successor corporation.

7. Anything herein to the contrary notwithstanding, this Agreement may terminate at the option of Mr. Kraemer on the later of (i) the payment by the Company of the Notes issued under a Purchase Agreement dated as of July 24, 1969, between the Company and several Purchasers as defined therein; or (ii) after all such Purchasers sell or otherwise transfer their stock in the Company.

8. This Agreement shall be construed under, and governed by the laws of the State of Delaware.

9. Any action or decision to be made or taken or consent to be given by the Company hereunder shall only be done with the written consent of stockholders of the Company holding in the aggregate 50% of the principal amount of the Notes then outstanding which are referred to in paragraph 7 above.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands as of the day and year first above written.

AIRSPUR CORPORATION

[CORPORATE SEAL]

By B. V. BROOKS, JR.
Secretary

Attest:

JERRY W. RYAN
Ass't Secretary

WARREN E. KRAEMER [L.S.]
Warren E. Kraemer

Agreed:

WARREN E. KRAEMER ASSOCIATES, INC.

By WARREN E. KRAEMER

AGREEMENT AMONG STOCKHOLDERS

AGREEMENT dated as of July 24, 1969, among AIRSPUR CORPORATION, a Delaware corporation (hereinafter called "Airspur"), and the stockholders of Airspur named at the foot hereof (hereinafter collectively called the "Stockholders").

WHEREAS the authorized capital stock of Airspur consists of 500,000 shares of Common Stock, par value $0.10 per share (hereinafter called "Common Stock"), of which 125,000 shares are issued and outstanding;

WHEREAS the Stockholders identified at the foot hereof as "Group A Stockholders" (hereinafter collectively called "Group A Stockholders") own an aggregate of 125,000 shares of Common Stock (shares of Common Stock from time to time owned or held by Group A Stockholders being hereinafter called "Group A Stock");

WHEREAS the Stockholders identified at the foot hereof as "Group B Stockholders" (hereinafter collectively called "Group B Stockholders") have agreed to purchase an aggregate of 125,000 shares of Common Stock (shares of Common Stock from time to time owned or held by Group B Stockholders being hereinafter called "Group B Stock") and $3,750,000 aggregate principal amount of 8% Notes (hereinafter called the "Notes") of Airspur (said Group B Stockholders as holders of the Notes being hereinafter called the "Noteholders") pursuant to a Purchase Agreement, dated as of July 24, 1969, among Airspur and the Group B Stockholders (hereinafter called the "Purchase Agreement");

WHEREAS the Group B Stockholders wish to impose certain controls over Airspur as a condition to their investment in Airspur through the purchase of the Group B Stock and the Notes and it is a condition to the obligations of the Group B Stockholders to make such a purchase that this Agreement shall be duly executed and delivered by the parties hereto; and

WHEREAS it is deemed to be in the best interests of Airspur and the Stockholders that provisions be made for continuity and stability of policy for Airspur and, to that end, that the Group A Stockholders and the Group B Stockholders share equally in the management of Airspur and the control of its policy to the extent and upon the terms and conditions herein stated, and that the Group A Stockholders be restricted in their power to sell Group A Stock;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein set forth, the parties hereby agree as follows:

1. (a) Unless the prior written consent of at least a majority of the shares of the Group B Stock held by Group B Stockholders who are also Noteholders at the time outstanding shall have been obtained by Airspur, the Stockholders shall vote whether directly or by written consent all the shares of Common Stock owned or held by them against any proposal (i) to amend the Certificate of Incorporation of Airspur or the By-laws of Airspur; (ii) to sell, lease, convey or exchange all of the properties and assets of Airspur or to merge or consolidate Airspur into or with any other corporation; and (iii) to approve or ratify any contract or act submitted for approval by the Board of Directors of the Company to the Shareholders of the Company.

(b) If the requisite number of Group B Stockholders who are also Noteholders shall deem a stock split necessary as provided in Section 8.07 of the Purchase Agreement, the Stockholders shall vote all shares of Common Stock owned or held by them in favor of such stock split.

(c) At each annual meeting of stockholders of Airspur, (i) the Group A Stockholders shall have the right to nominate three of the directors (hereinafter called the "Group A Directors") to be elected at such meeting; (ii) a majority of the shares of the Group B Stock held by Group B Stockholders who are also Noteholders shall have the right to nominate three of the directors (hereinafter called the "Group B Directors") to be elected at such meeting; and (iii) the Stockholders shall vote all shares of Common Stock owned or held by them in favor of the election of such six nominees.

(d) If any vacancy shall occur on the Board between annual meetings of stockholders of Airspur for any reason whatsoever and a special meeting of stockholders of Airspur is called to elect a new director to replace such former director, then the following provisions shall apply:

(i) if the former director was a Group A Director, then the Group A Stockholders shall have the right to nominate a successor director; and

(ii) if the former director was a Group B Director, then a majority of the shares of the Group B held by the Group B Stockholders who are also Noteholders shall have the right to nominate a successor director.

The Stockholders shall vote all shares of Common Stock owned or held by them in favor of the election of the successor director so nominated.

2. Each Group A Stockholder hereby agrees not to

sell or otherwise transfer any of the Group A Stock owned or held by it or him as long as any of the Notes are outstanding and unpaid in whole or in part unless such sale or transfer shall have been consented to in advance by a majority of the shares of Group B Stock held by the Group B Stockholders who are also Noteholders.

3. The Group B Stockholders who are also Noteholders shall have the right to purchase, in connection with any underwritten public offering of shares of Common Stock of the Company, sufficient of such shares as they may deem appropriate to avoid dilution of their interests in the Company.

4. The Group A Stock and the Group B Stock shall not be sold, assigned, transferred, pledged, or otherwise disposed of, and shall not be transferred on the books of Airspur, nor, unless the Company shall have otherwise agreed (such agreement to be evidenced by a resolution adopted by the Board of Directors), shall any shares of Common Stock of Airspur be issued or sold unless the assignee, transferee, purchaser, recipient or pledgee of such shares shall agree in writing to be bound by, and to comply with, all the then effective terms and provisions of this Agreement. The assignee, transferee or pledgee of Group A Stock or Group B Stock for the purposes of this Agreement shall be deemed to be a Group A Stockholder or a Group B Stockholder, respectively, and any purchaser or recipient of newly issued shares of Common Stock shall, for purposes of this Agreement, be deemed to be a Group B Stockholder and each such assignee, transferee, pledgee, purchaser and recipient shall also be deemed to be a Stockholder.

5. So long as this Agreement shall continue in effect, the following legend shall be conspicuously written, printed or stamped on the face of all certificates for shares of all Common Stock now or hereafter issued and outstanding and on the face of all certificates issued in substitution or exchange therefor or upon a transfer thereof:

> "NOTICE: The sale, assignment, transfer, pledge or other disposition of this Certificate and of the shares of stock represented thereby and, under certain circumstances, the voting of such shares, are subject to the terms and conditions of a Purchase Agreement dated as of July 24, 1969 and an Agreement Among Stockholders dated as of July 24, 1969, as each are now in effect or as the same may have been supplemented and amended, among Airspur Corporation and the parties thereto to all the provisions of which Agreements the holder of this Certificate, by the acceptance hereof, assents. A copy of said Agreements, to which reference is hereby made, are on file at the office of Airspur."

6. In the event of the invalidity of any part or provision of this Agreement, such invalidity shall not affect then enforceability of any other part or provision of this Agreement.

7. For purposes of this Agreement, the following present members of the Board shall be deemed to have been nominated by the Group A Stockholders and elected by the Stockholders, and the following present members of the Board shall be deemed to have been nominated by the Group B Stockholders and elected by the Stockholders:

Group A Stockholders	Group B Stockholders
B. V. Brooks	Leonard Andrews
Warren E. Kraemer	Joseph Benning, Jr.
Jerry W. Ryan	Richard Mersinger

8. This Agreement shall terminate on the later of (i) the payment of all principal and interest due under the Notes or (ii) the expiration of three years from the date hereof.

9. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and to their executors, administrators, successors and assigns.

10. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. This Agreement shall be governed by, and corstrued in accordance with, the laws of the State of Delaware.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

AIRSPUR CORPORATION

By WARREN E. KRAEMER
Chairman of the Board

Attest:

B. V. BROOKS, JR.
Secretary

Group A Stockholders:

B. V. BROOKS, JR.
B. V. Brooks

B. V. BROOKS, JR.
Brooks, Torrey & Scott

WARREN E. KRAEMER
Warren E. Kraemer Associates, Inc.

Group B Stockholders:

BANKERS TRUST COMPANY,
as Trustee of various trust funds

By A. T. WICKERSHAM
Vice President

MERCANTILE COMMERCE COMPANY

By JOHN FOX
V.P.-Treas.
THE VALUE LINE SPECIAL SITUATIONS
FUND, INC.

By DAVID HUXLEY
Secretary
CHEMICAL BANK, as Trustee of The
Chemical Bank New York Trust Company
Commingled Employee Benefit Special
Fund

By JOHN H. MILLER
Pension Trust Officer
BEECHMONT COMPANY, as Agent

By LEONARD ANDREWS
Attorney-in-fact
THE DIEBOLD TECHNOLOGY VENTURE FUND, INC.

By GEORGE PRATT
President
OHIO REAL PROPERTY, INC.

By K. R. CRAVENS

D. B. GLYNN & COMPANY

By JOS. A. GLYNN, JR.

RAYMOND E. ROWLAND [L.S.]
Raymond E. Rowland

SEP 6 1972

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROY BABITT

IN THE MATTER

OF

AIRSPUR CORPORATION, a/k/a AIRSPUR NEW YORK,

Bankrupt.

No. 70 B 577

OBJECTION TO CLAIM AND OFFSETS, CROSS-CLAIMS AND REQUEST FOR AFFIRMATIVE JUDGMENT

JEROME LIPPER, the trustee herein, objects to claim number 46 filed by BANKERS TRUST COMPANY, in the sum of $1,875,000.00, and cross claims and moves for affirmative judgment against the said claimant on the following grounds:

1. Claimant was a stockholder of the bankrupt, with its agent or representative on the Board of Directors, was privy to the operations and transactions of the bankrupt from or about the date of incorporation and shared equally in the management and control of the bankrupt.

2. On July 24, 1969, 62,500 original issue shares of common stock of the bankrupt were issued to claimant's nominee, Pitt & Co., for the sum of $625,000.00

3. On July 24, 1969, Bankers Trust Company, as Trustee of various trust funds, entered into an agreement collectively with Airspur Corporation (Airspur), the bankrupt, and the stockholders of Airspur, namely: Mercantile Commerce Company, The Value Line Special Situation Fund, Inc., Chemical Bank, as Trustee of the Chemical Bank

New York Trust Company Commingled Employee Benefit Special Fund, Beechmont Company, as Agent, Diebold Technology Venture Fund, Inc., Ohio Real Property, Inc., D. B. Glynn & Company, designated as Group B stockholders, and B. V. Brooks, Brooks, Torrey & Scott, and Warren E. Kraemer Associates, Inc., designated as Group A stockholders. (Exhibit A.)

4. Under the terms of said agreement, which was entered into for the best interests of and for the benefit of Airspur and the parties therein stated, Group B stockholders covenanted to impose certain controls over Airspur, among which was the power to approve or ratify any contract or act submitted for approval by the Board of Directors of Airspur to the shareholders of the company, and claimant, Bankers Trust Company was kept informed of the negotiations, received memoranda pertaining thereto, and received drafts of proposed agreements relating to the transactions herein mentioned for its consideration and/or approval.

5. Leonard E. B. Andrews (Andrews) was designated by the claimant as its agent and representative to act on the Board of Directors of the bankrupt.

6. Andrews was elected to the Board of Directors of the bankrupt on July 24, 1969, and thereafter, on September 12, 1969, was appointed Senior Vice President.

7. As a director and officer of the bankrupt, Andrews owed a duty to the bankrupt to use that degree of diligence, care and skill which an ordinary prudent

man would exercise under similar circumstances in like positions.

8. As a director and officer of the bankrupt, Andrews had a duty to know what was transpiring in the business affairs of the corporation, and, in the assumption of his fiduciary position, he had a duty to act in good faith andnot to close his eyes to what was going on around him.

9. As a director and officer, Andrews was responsible for acts of omission and neglect of his duties.

10. As will hereinafter be shown, Andrews breached his duties as an officer and director of the bankrupt, whichresulted in financial disaster and the bankruptcy of Airspur.

11. At all times hereinafter mentioned, the claimant, Bankers Trust, had or is chargeable with knowledge of the negligent acts and or omissions of its agent or representative, Andrews, as a member of the board of directors of Airspur.

12. Andrews acted or omitted to act or was negligent as a director of Airspur as a result of which Airspur was damaged as hereinafter mentioned.

13. Between on or about January 1966 to about 1969 or 1970, Warren E. Kraemer (Kraemer), president of Airspur, operated an agency in the United States on behalf of Handley Page, Ltd., an English corporation, (original Handley) which was engaged in the business of manufacturing airplanes in England.

14. Kenton R. Cravens, deceased, (Cravens) was a stockholder and officer as well as director of K. R. Cravens Inc,. (Cravens Inc.) and of International Jetstream Corp. (International).

15. During the aforesaid period, International was the exclusive distributor for original Handley and Cravens Inc., which financed or purchased planes and had them shipped or transferred to International.

16. In or about 1968 or 1969 or prior thereto, original Handley had embarked upon or contemplated the manufacture of a new type of custom-built plane designed for short hops and known as the Handley Page Jetstream, (Jetstream).

17. From about 1968 to 1969 and prior thereto, original Handley was having financial difficulties.

18. Kraemer and Cravens met from time to time to discuss their respective relationship to and interests in the original Handley and in the development and manufacture of Jetstream planes by the original Handley and a successor company, in light of the financial difficulties of the original Handley.

19. Kraemer and Cravens, motiviated by self-interest and personal profit, conceived and implemented a plan to maintain such interest as they had in the original Handley or its successor company by refinancing

and revitalizing the original Handley so that it could continue the manufacturing of airplanes, particularly the Jetstream planes.

20. The plan contemplated the following:

a. Kraemer was to form a corporation which was thereafter known as Airspur.

b. The company that was to be formed by Kraemer was to acquire companies which had routes or some equipment already engaged in such business.

c. The company that was to be formed by Kraemer was to use the Jetstream as its main airplane carrier. The planes were to be purchased from International, the sole distributor for said plane in the United States.

d. Cravens was to assist in or help acquire financing from Kraemer's corporation which was to be formed as aforesaid, and in addition, he was to attempt to acquire financing in order to take over the defunct original Handley.

e. The corporation to be formed by Kraemer was to purchase a substantial number of Jetstreams from International.

21. Kraemer and Cravens then implemented their plan as aforesaid, and Kraemer formed Airspur.

22. The plan, or parts thereof, were disclosed by Kraemer to all the directors of Airspur in or about 1969.

23. Investments in Airspur were solicited from third parties by said Kraemer, Cravens, and Andrews at about

the same time Cravens was negotiating with the receiver of Handley Page to purchase, revitalize and refinance the operations of Handley Page and, particularly, its production of the Jetstream.

24. In July 1969, Bankers Trust advanced to Airspur an approximate total of $2,500,000.00, some of which was from trust funds administered by it

25. On August 7, 1969, a receiver was appointed by the English Court for the, by then, totally bankrupt original Handley.

26. On August 15, 1969 and on October 17, 1969, a company formed and/or controlled by Cravens, contracted with the receiver of the original Handley to purchase the original Handley and continue operations as Handley Page Aircraft, Ltd., (Handley II).

27. At about the time Airspur had been formed, Andrews was elected a director of Airspur, pursuant to an arrangement or an agreement as hereinbefore mentioned, to protect the respective investments and/or loans made by Bankers Trust, as hereinbefore mentioned, and he continued as director until about August 31, 1970, when Airspur was adjudicated a bankrupt.

28. Claimant had knowledge or is chargeable with knowledge that Kraemer, an officer of Airspur, was engaged in negotiations with Cravens of International for the alleged purchase of certain Jetstream aircraft, manufactured or to be manufactured by Handley II.

29. The negotiations between Airspur and the proposals thereto were that Airspur was to acquire (20) twenty Jetstream aircraft and obtain an option on ten (10) additional aircraft.

30. The negotiations contemplated that the first five or eight Jetstreams contracted for would cost $445,000.00 each, plus $20,000.00 for factory installed optional equipment, that the price of nine through twenty of said planes was to be $520,000.00 each; with a 10% down payment for each plane purchased, and the remainder to be paid over five to seven years at 6-1/4% interest, based on the United Kingdom Government (E.C.G.D.) financing or other financing which would minimize the cash investment of Airspur and which cash was required in developing the future operations of Airspur's business.

31. The negotiations were that the purchase agreement, if any, was contingent upon a number of factors, including replacement with more powerful engines, modification of certain parts of the plane which were defective, the availability of financing as hereinbefore mentioned, and the approval of the Federal Aviation Administration that the Jetstream could be flown for public transportation.

32. Negotiations continued between Cravens, Kraemer, International and Airspur, but remained in a state of flux and never culminated into an agreement between

Airspur and International.

33. In December of 1969, by arrangement between Kraemer and Cravens, Airspur gave $100,000.00 to International, allegedly as some form of token, subject to an agreement being actually entered into, if any, between International and Airspur for the alleged purchase of twenty (20) Jetstream aircraft, pursuant to specific conditions submitted by Airspur as hereinbefore mentioned.

34. Cravens and his associates could not raise the necessary financing or were short the money to finance the contemplated Handley II reorganization and its operations.

35. At the same time, International was in financial difficulties or insolvent.

36. Cravens needed money for International or Handley II, or to meet past due bills.

37. Cravens and Kraemer then conceived a plan whereby Airspur would lend to International a sum of $906,850.00.

38. Airspur did lend to International the sum of $906,850.00 and received therefor notes of International for said sum.

39. Said notes had no guarantors, but were merely notes executed by International.

40. The said notes were not secured in any manner.

41. On or about January or February of 1970, the financial conditions of International, or its affiliated companies, deteriorated, and the attempts to rehabilitate and refinance the original Handley were failing, whereupon a plan was conceived by Cravens and Kraemer to eliminate the debt owed by International to Airspur in the sum of $906,850.00, represented by International's notes, and the $100,000,00 token deposit hereinbefore mentioned.

42. To implement said plan, it was arranged by the parties hereinbefore mentioned and others that International do the following:

a. Purportedly arrange for a sale of four (4) Jetstream aircraft to Airspur,

b. Make it appear that Airspur had possession of four (4) Jetstream aircraft,

c. Make it appear that Airspur had a security interest in the said four (4) Jetstream planes, and

d. Arrange that the notes for the sum of $906,850.00 be returned by Airspur to International for alleged payment of four (4) Jetstream planes under the guise of the plan hereinbefore mentioned.

42 A. The foregoing plan was implemented, and the notes for $906,850.00 were marked "paid February 24, 1970" and were returned by Airspur to International on the basis that Airspur had title, possession and security interest in four (4) Jetstream planes.

43. Thereafter and on or about February 27, 1970, three (3) Jetstream aircraft were flown to Northwest Industries Ltd., located in Edmunton, Alberta, Canada, a subcontractor of Cravens Inc. or International, or their interrelated or affiliated company.

44. The facts were that on February 24, 1970, when the notes were returned as aforesaid, Airspur neither had title, possession nor a security interest in any four (4) or even three (3) Jetstream planes.

45. Attempts were made thereafter to purportedly transfer three (3) Jetstream planes to Airspur, which planes did not have the necessary modifications or changes of engines, which could not be used for public air transportation and which had not been financed as negotiated for as hereinbefore mentioned.

46. At the January 6, 1970 meeting of the Board of Directors, at which Andrews was present, it was reported that continuing efforts were being made to finance the Jetstream fleet. At the February 13, 1970 meeting, at which Andrews was present, further reports were made of the difficulties involved with the financing of the Jetstream aircraft. It was also reported that four Jetstream aircraft were at that time in Canada.

47. In reality, there were no Jetstream aircraft in Canada, and by the February meeting, it was obvious that

no financing would be forthcoming from the British Government. Yet, on February 24, 1970, with the acquiescence of Andrews, the International Jetstream notes were marked "Paid February 24, 1970" and were returned by Airspur to International Jetstream on the pretense that Airspur had title, possession and a security interest in four Jetstream planes.

48. Andrews, having been forewarned by previous errors in porjections submitted to him and by other loose acts and statements of officers and directors of Airspur, and having knowledge of the aforementioned, had a duty to act as a prudent man managing his own property. He had, therefore, a duty to investigate and prevent the virtual gift of approximately $1,000,000.00 to International Jetstream.

49. Andrews did not request to see or inquire as to whether a written memorandum or contract had been signed by International or Airspur as to the transactions relating to the purchase of Jetstream aircraft, or as to whether the negotiations had resulted in compliance with the necessary implementation of the proposals as set forth in paragraphs 30 and 31 supra.

50. Prior to the token $100,000.00 being given by Airspur to International and the said loan of $906,850.00 having been made and thereafter, both prior to

and when the notes were returned to International as hereinbefore mentioned, Andrews did not request a financial statement, credit report or information as to the financial responsibility of International, failed to make any investigation thereof, and had no knowledge of the financial responsibility of International.

51. Andrews continued to neglect his duty to the bankrupt, and acquiesced in matters which led to further waste of corporate assets, to wit: In or about May, 1970, Kraemer and Andrews, along with the other directors, conceived a plan to form a corporation to be known as American Jetstream, Inc., (American Jetstream), which was to purchase the then remaining fixed assets of Handley II, even though it was common knowledge that Cravens had failed disastrously in his attempt to reorganize the original Handley company, that it was impossible to get financing from the British Government, that the Jetstream aircraft were defective, that a Jetstream aircraft had crashed over St. Moritz, Switzerland on March 6, 1970, killing at least thirteen persons, and that the Federal Aviation Administration had banned the commercial use of Jetstream aircraft in the United States.

52. Despite the above, Andrews agreed to the purchase of the assets of Handley II, and in furtherance of the plan, American Jetstream was incorporated on or

about May 11, 1970 under the laws of the State of Delaware, with 1,000 shares of authorized common stock of the par value of 10¢ a share. A certificate to do business in New York State was filed on June 9, 1970 by American Jetstream. American Jetstream actually only issued 100 shares, with a par value of $10.00, and all of these shares were issued to Airspur.

53. On June 2, 1970 an agreement was drawn between American Jetstream and Richard N.D. Langdon, the Court-appointed receiver of Handley II, whereby American Jetstream was to pay a deposit of approximately $72,000.00 for an option to buy the remaining assets of Handley II. The deposit would be forfeited if the option was not exercised. Said agreement is attached hereto, and marked Exhibit 1.

54. Directly, or through its wholly owned subsidiary, Airspur Financial Corp., Airspur paid said sum of approximately $72,000.00, which was the required deposit for acquiring the option hereinbefore mentioned. In addition, Airspur, or through its aforementioned subsidiary, paid various sums amounting to approximately $20,000.00 to Beaumont & Sons, the attorneys who were handling the transaction in question for American Jetstream in London.

55. No other capitol investment and no other

moneys of any kind were paid or invested by any other party.

56. Neither Airspur nor Airspur Financial Corp. received anything in return for the approximately $92,000.00 paid, as hereinbefore mentioned, except the 100 shares of American Jetstream stock, each of which share had a par value of 10¢, for a total of $10.00.

57. American Jetstream had no other assets of any kind, except the questionable option to acquire the remaining Handley II assets.

58. During the time that Airspur was paying the moneys hereinbefore mentioned, Airspur was short of operating capital, was in serious financial difficulties, and was not paying its bills as they became due.

59. The option hereinbefore mentioned had to be abandoned, and all of the $92,000.00 advanced and paid by Airspur, or Airspur Financial Corp., was lost.

60. Prior to the time assets of Airspur, and/or its subsidiary were wasted in the American Jetstream operation, Andrews knew that millions of dollars had previously been lost in an attmept to reorganize original Handley. He knew of the errors of judgment, misrepresentations and failures in projections, financial and otherwise involved in the above venture, yet he failed to further prevent the dissipation of the assets of the bankrupt,

failed to acquire further knowledge of relevant facts so as to prevent additional waste, which amounts to wanton and reckless disregard for the consequences of his conduct as will hereinafter be shown.

61. During and around the same time that Airspur was allegedly negotiating with International, to wit: on or about September or October, 1969, the Board of Directors of Airspur, including Andrews, conferred regarding the purchase of a Caribbean area airline passenger operation known as Tradewinds Airlines, Inc. (Tradewinds), and the purchase of 100% of the common stock of Tradewinds Investment Co., an affiliate of Tradewinds. These companies were to be purchased from Berwind Corporation of Philadelphia (Berwind), the parent corporation. Tradewinds was to be renamed Airspur Caribbean, Inc.

62. Andrews had knowledge that the capital investments and loans initiall made in Airspur totalled about $4,770,000.00, and that Airspur was then in its formative stages and required a good credit rating and an image to the general public that it was financially sound and responsible so as to induce other carriers and the general public to do business with it and use its passenger services.

63. The purchase price to be paid by Airspur for the acquisition as aforementioned from Berwind was a total sum of $3,550,000.00; $1,150,000.00 in cashand $2,400,000.00 in installments.

64. During the negotiations and discussions, taking into consideration the limited capital and cash that Airspur had as against the amount necessary for expansion and to have credit extended to it, no security interest or liens were to be given to Berwind for the balance of the purchase price which was to be paid in installments.

65. Thereafter, on October 22, 1969, Airspur entered into an agreement which was closed on October 30, 1969 whereby it purchased from Berwind the common stock of Tradewinds Investment Company, with a cash payment of $1,150,000.00 and installment payments of a balance of $2,400,000.00, represented by notes.

66. Andrews was kept informed of the negotiations, received various memoranda pertaining thereto, and received drafts of the proposed agreement between Airspur and Berwind.

67. The transaction involving Berwind was the most important acquisition undertaken by Airspur, representing an aggregate cash payment and deferred obligation, of which $1,150,000.00 cash was an immediate payment.

68. Andrews had knowledge that the total investment in and loans made initially to Airspur was the sum of about $4,770,000.00.

69. The transaction with Berwind, involving

$3,550,000.00, was of major importance to Airspur, and claimant, by its stockholder's agreement was obligated to make a thorough investigation of the operations of the business Airspur was acquiring. It was claimant's duty to determine the probabilities of Airspur Caribbean being a successful operation, to examine the provisions of the contract relating thereto, and to recognize the effect the signing of said contract would have on the future of Airspur.

70. Despite the significance of the Berwind transaction, the claimant or its representative did not investigate the matter with the reasonsble care a businessman of ordinary prudence would have exercised in the management of his own affairs.

71. Reasonable investigation by the claimant or its representative into the operation of Tradewinds would have established that same was unsuccessful, and that the transaction was doomed to fail.

72. Claimant's representative failed and omitted to perform his duties as officer and director of Airspur, and therefore claimant, under the aforementioned agreement among stockholders, was negligent in failing to prevent the disaster which resulted from the Berwind transaction.

73. The consequences of the Berwind transaction directly resulted in the bankruptcy

of Airspur, resulting in damages to Airspur of approximately $5,000,000.00.

PLEASE TAKE FURTHER NOTICE that no date has been set for a hearing on the objection within. A hearing is subject to the Honorable Roy Babitt, Referee in Bankruptcy, setting a date on his calendar for a date certain, written notice of which will be forwarded to you or your authorized attorney.

WHEREFORE, Jerome Lipper, said trustee, prays that said claim of Bankers Trust Company be disallowed, and that he recover from said claimant the amount of $6,208,904.00.

Dated: New York, New York
21 day of August, 1972

Jerome Lipper, Trustee

AGREEMENT AMONG STOCKHOLDERS

AGREEMENT dated as of July 24, 1969, among AIRSPUR CORPORATION, a Delaware corporation (hereinafter called "Airspur"), and the stockholders of Airspur named at the foot hereof (hereinafter collectively called the "Stockholders").

WHEREAS the authorized capital stock of Airspur consists of 500,000 shares of Common Stock, par value $0.10 per share (hereinafter called "Common Stock"), of which 125,000 shares are issued and outstanding;

WHEREAS the Stockholders identified at the foot hereof as "Group A Stockholders" (hereinafter collectively called "Group A Stockholders") own an aggregate of 125,000 shares of Common Stock (shares of Common Stock from time to time owned or held by Group A Stockholders being hereinafter called "Group A Stock");

WHEREAS the Stockholders identified at the foot hereof as "Group B Stockholders" (hereinafter collectively called "Group B Stockholders") have agreed to purchase an aggregate of 125,000 shares of Common Stock (shares of Common Stock from time to time owned or held by Group B Stockholders being hereinafter called "Group B Stock") and $3,750,000 aggregate principal amount of 8% Notes (hereinafter called the "Notes") of Airspur (said Group B Stockholders as holders of the Notes being hereinafter called the "Noteholders") pursuant to a Purchase Agreement, dated as of July 24, 1969, among Airspur and the Group B Stockholders (hereinafter called the "Purchase Agreement");

WHEREAS the Group B Stockholders wish to impose certain controls over Airspur as a condition to their investment in Airspur through the purchase of the Group B Stock and the Notes and it is a condition to the obligations of the Group B Stockholders to make such a purchase that this Agreement shall be duly executed and delivered by the parties hereto; and

WHEREAS it is deemed to be in the best interests of Airspur and the Stockholders that provisions be made for continuity and stability of policy for Airspur and, to that end, that the Group A Stockholders and the Group B Stockholders share equally in the management of Airspur and the control of its policy to the extent and upon the terms and conditions herein stated, and that the Group A Stockholders be restricted in their power to sell Group A Stock;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein set forth, the parties hereby agree as follows:

1. (a) Unless the prior written consent of at least a majority of the shares of the Group B Stock held by Group B Stockholders who are also Noteholders at the time outstanding shall have been obtained by Airspur, the Stockholders shall vote whether directly or by written consent all the shares of Common Stock owned or held by them against any proposal (i) to amend the Certificate of Incorporation of Airspur or the By-laws of Airspur; (ii) to sell, lease, convey or exchange all of the properties and assets of Airspur or to merge or consolidate Airspur into or with any other corporation; and (iii) to approve or ratify any contract or act submitted for approval by the Board of Directors of the Company to the Shareholders of the Company.

(b) If the requisite number of Group B Stockholders who are also Noteholders shall deem a stock split necessary as provided in Section 8.07 of the Purchase Agreement, the Stockholders shall vote all shares of Common Stock owned or held by them in favor of such stock split.

(c) At each annual meeting of stockholders of Airspur, (i) the Group A Stockholders shall have the right to nominate three of the directors (hereinafter called the "Group A Directors") to be elected at such meeting; (ii) a majority of the shares of the Group B Stock held by Group B Stockholders who are also Noteholders shall have the right to nominate three of the directors (hereinafter called the "Group B Directors") to be elected at such meeting; and (iii) the Stockholders shall vote all shares of Common Stock owned or held by them in favor of the election of such six nominees.

(d) If any vacancy shall occur on the Board between annual meetings of stockholders of Airspur for any reason whatsoever and a special meeting of stockholders of Airspur is called to elect a new director to replace such former director, then the following provisions shall apply:

(i) if the former director was a Group A Director, then the Group A Stockholders shall have the right to nominate a successor director; and

(ii) if the former director was a Group B Director, then a majority of the shares of the Group B held by the Group B Stockholders who are also Noteholders shall have the right to nominate a successor director.

The Stockholders shall vote all shares of Common Stock owned or held by them in favor of the election of the successor director so nominated.

2. Each Group A Stockholder hereby agrees not to

P. 7 sell or otherwise transfer any of the Group A Stock owned held by it or him as long as any of the Notes are outstanding and unpaid in whole or in part unless such sale or transfer shall have been consented to in advance by a majority of the shares of Group B Stock held by the Group B Stockholders who are also Noteholders.

3. The Group B Stockholders who are also Noteholders shall have the right to purchase, in connection with any underwritten public offering of shares of Common Stock of the Company, sufficient of such shares as they may deem appropriate to avoid dilution of their interests in the Company.

4. The Group A Stock and the Group B Stock shall not be sold, assigned, transferred, pledged, or otherwise disposed of, and shall not be transferred on the books of Airspur, nor, unless the Company shall have otherwise agreed (such agreement to be evidenced by a resolution adopted by the Board of Directors), shall any shares of Common Stock of Airspur be issued or sold unless the assignee, transferee, purchaser, recipient or pledgee of such shares shall agree in writing to be bound by, and to comply with, all the then effective terms and provisions of this Agreement. The assignee, transferee or pledgee of Group A Stock or Group B Stock for the purposes of this Agreement shall be deemed to be a Group A Stockholder or a Group B Stockholder, respectively, and any purchaser or recipient of newly issued shares of Common Stock shall, for purposes of this Agreement, be deemed to be a Group B Stockholder and each such assignee, transferee, pledgee, purchaser and recipient shall also be deemed to be a Stockholder.

5. So long as this Agreement shall continue in effect, the following legend shall be conspicuously written, printed or stamped on the face of all certificates for shares of all Common Stock now or hereafter issued and outstanding and on the face of all certificates issued in substitution or exchange therefor or upon a transfer thereof:

> "NOTICE: The sale, assignment, transfer, pledge or other disposition of this Certificate and of the shares of stock represented thereby and, under certain circumstances, the voting of such shares, are subject to the terms and conditions of a Purchase Agreement dated as of July 24, 1969 and an Agreement Among Stockholders dated as of July 24, 1969, as each are now in effect or as the same may have been supplemented and amended, among Airspur Corporation and the parties thereto to all the provisions of which Agreements the holder of this Certificate, by the acceptance hereof, assents. A copy of said Agreements, to which reference is hereby made, are on file at the office of Airspur."

6. In the event of the invalidity of any part or provision of this Agreement, such invalidity shall not affect then enforceability of any other part or provision of this Agreement.

7. For purposes of this Agreement, the following present members of the Board shall be deemed to have been nominated by the Group A Stocknolders and elected by the Stockholders, and the following present members of the Board shall be deemed to have been nominated by the Group B Stockholders and elected by the Stockholders:

Group A Stockholders	Group B Stockholders
B. V. Brooks	Leonard Andrews
Warren E. Kraemer	Joe Benning, Jr.
Jerry W. Ryan	Richard Mersinger

8. This Agreement shall terminate on the later of (i) the payment of all principal and interest due under the Notes or (ii) the expiration of three years from the date hereof.

9. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and to their executors, administrators, successors and assigns.

10. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

AIRSPUR CORPORATION

By _____
Chairman of the Board

Attest:

_____
Secretary

Group A Stockholders:

_____
B. V. Brooks

_____
Brooks, Torrey & Scott

_____
Warren E. Kraemer Associates, Inc.

Group B Stockholders:

BANKERS TRUST COMPANY,
as Trustee of various trust funds

By _____

MERCANTILE COMMERCE COMPANY

By_____

THE VALUE LINE SPECIAL SITUATIONS FUND, INC.

By_____

CHEMICAL BANK, as Trustee of The Chemical Bank New York Trust Company Commingled Employee Benefit Special Fund

By_____

BEECHMONT COMPANY, as Agent

By_____

THE DIEBOLD TECHNOLOGY VENTURE FUND, INC.

By_____

OHIO REAL PROPERTY, INC.

By_____

D. B. GLYNN & COMPANY

By_____

_____ [L.S.]
Raymond E. Rowland

THIS AGREEMENT is made the Second day of June One thousand nine hundred and sevent

BETWEEN HANDLEY PAGE AIRCRAFT LIMITED of Colney Street St. Albans Hertfordshire (hereinafter called "the Vendor") acti by RICHARD NORMAN DARBEY LANGDON of St. Mary Axe House St. Mar Axe London, E.C.3. (hereinafter called "the Receiver") of the one part and AMERICAN JETSTREAM INC. a Corporation organised and existing under the laws of the State of Delaware (hereinaft called "the Purchaser") of the other part

WHEREAS

(1) In pursuance of an Agreement dated Fifteenth day of Augus One thousand nine hundred and sixty nine between the Vendor an Handley Page Limited (a copy of which is exhibited hereto and marked "A") as amended by an Agreement dated Seventeenth day o October One thousand nine hundred and sixty nine made between Handley Page Limited Handley Page Aircraft and K.R. Cravens Corporation (a copy of which is exhibited hereto and marked "B" the latter sold its goodwill undertaking and certain assets to the Vendor

(2) The Receiver was appointed Receiver and Manager of the Vendor on the Eleventh day of March One thousand nine hundred and seventy under a Debenture issued to the Mercantile Trust Company National Association of St. Louis Missouri United Stat of America

NOW IT IS HEREBY AGREED as follows :-

1. THE Vendor hereby grants to the Purchaser an option to purchase the following assets on the terms and conditions hereinafter contained :-

FIRSTLY the goodwill and undertaking of the business of the Vendor relating to the H.P. 137 "Jetstream" Aircraft with the exclusive right for the Purchaser to represent itself as carrying on the said business in continuation and in succession to the Vendor

EXHIBIT 1

SECONDLY the designs drawings patents trade marks and trade names (if any) and the benfit of all research and development belonging to the Vendor and used by it in connection with the said business and all rights of actio. in connection therewith respectively

THIRDLY all right title and interest in the work-in-progr finished or partly finished goods and stock-in-trade and all jigs and tools owned by the Vendor and used in the said business (details of which are set out in the First Schedule hereto)

FOURTHLY all right title and interest in the work-in-progress finished or partly finished goods and stock-in-trade and all jigs and tools owned by the Vendor and used in the said business (excepting the project known as the Jetstream 230 Project) The items fourthly described abov include the items more particularly described in the Second Schedule hereto

2. THE option hereby granted may be exercised by notice in writing given by the Purchaser to the Vendor and received by t Vendor at any time on or before 22nd July 1970. Subject to the receipt by the Vendor of such notice exercising the option in manner aforesaid completion of the sale and purhcase of the assets referred to in Clause 1 hereof shall take place on 29th July 1970 or such earlier date as the Purchaser may specify being not less then 7 days after receipt of the said notice.

3. THE consideration for the option hereby granted is the sum of Thirty Thousand pounds which sum shall be paid forthwith on the signing hereof and shall in no circumstances be returnable to the Purchaser. The consideration for the sale and purchase shall be the sum of Two hundred and seventy thousand pounds which shall be paid on completion

4. THE Receiver hereby declares that to the best of his knowledge and belief the Vendor has subject as disclosed in writing to the Purhcaser a good and marketable title free fro all liens charges and encumbrances (other than the potential

claim for Customs Duty arising under the General Bond for Duty free Importations mentioned in Clause 7 below) to the assets listed in the First and Second Schedules but the Receiver gives no warranty to that effect and the Receiver shall not be personally liable in the event of the Vendor's title to any such assets proving to be defective nor any warranty as to the merchantability or fitness for any particular purpose of any of the assets hereby agreed to be sold. The Receiver agrees to use his best endeavours to procure any consents of third parties which may be required to enable the Purchaser to take delivery of the assets referred to in Clause 1 hereof and assist the Purchaser so far as possible (but at the expense of the Purhcaser) in acquiring any rights or assets relating to the H.P.137 "Jetstream" Aircraft which may be owned by or vested in any third party It is expressly agreed and understood that any assets sold by the Vendor to Hawker Siddeley Aviation Limited pursuant to an Agreement dated the Fifteenth day of April One thousand nine hundred and seventy (a copy of which has been supplied to the Purchaser) and any assets comprised in the said Jetstream 230 Project are excluded from the sale and purchase to be made pursuant to any exercise of the option herein contained

5. So far as the various aircraft and other assets in the Second Schedule are concerned it is hereby agreed and understood that these or part of them may be the property or may be subject to liens or claims of third parties in addition to those disclosed in writing to the Purchaser pursuant to Clause 4 hereof and it is further agreed that the Receiver shall be entitled to deal with the assets listed in the Second Schedule at any time before completion in such manner as he shall in his absolute discretion think fit provided that any costs and expenses of whatsoever nature incurred by the Receiver in so dealing with said assets shall be added to the purchase price and any proceeds (excluding

any benefit received by The Vendor as a result of reduction in liability for customs duty) arising from any disposal of any of the said assets shall be deducted from the purchase price.Without prejudice to Receiver's absolute discretion to deal with the said assets the Receiver undertakes that he will whenever possible inform the Purchaser or its agent of any action he proposes to take pursuant to this clause before taking such action. The Receiver may deal with any of the assets listed in the First Schedule on the same basis as those listed in the Second Schedule with the consent of the Purchaser or its agent.

6. THE Purchaser shall be entitled to take possession of the assets subject to the option herein contained forthwith upon completion and the Receiver shall then permit the Purchaser's representatives employees and agents to enter upon the premises occupied by the Vendor at Radlett Aerodrome Hertfordshire for that purpose subject to the supervision of the Receiver The Receiver undertakes to use his best endeavours to assist the Purchaser in obtaining any licence required by the Purchaser to occupy part of the premises at Radlett Aerodrome

7. THE Purchaser hereby undertakes that it will procure the release forthwith on completion by the Commissioners of Customs and Excise of the Vendor and Barclays Bank Limited from the General Bond for Duty Free Importations dated the Twenty sixth day of September One thousand nine hundred and sixty nine given jointly and severally by the Vendor and Barclays Bank Limited to the said Commissioners in the sum of Two hundred and fifty thousand pounds and the substitution therefore of a new Bond entered into by the Purchaser with the said Commissioners in at least an equivalent sum

8. THE Purchaser shall pay all stamp duties in relation to this Agreement

9. THIS Agreement shall be goverened by and construed in accordance with the laws of England

AS WITNESS the hands of the parties hereto the day and year first above written

THE FIRST SCHEDULE above referred to

PART A - JETSTREAM AIRCRAFT

Owned by Handley Page Aircraft

Construction No.	British Registration Mark	Production No.	Mk. or Series
198 (Prototype)	G-ATXH	P.P.1	2
199 (Prototype)	G-ATXI	P.P.2	3M
~~200 (Prototype)~~	~~G-ATXJ~~	~~P.P.4~~	~~1~~
258 (Prototype)	G-AWBR	P.P.6	3M
211 (Development)	G-AXFV	10	11
222	G-AXUI	22	1
		20	C.10A/3M(Test Airframe)
245	G-AXUM	44	
246	G-AXUN	45	
248	G-AXUO	46	
249	G-8-14	48	
251	G-AXUP	49	
259	G-AXUR	50	
261		52	
262		53	
263		54	
264		56	
265		57	
266		58	
267		60	

Test Aircraft in Test House

PART B - SPARES

A. BILTON OFFICES AND HANGAR

1. Office 94

Instruments and P.A. items. Bonded Stores Status.

2. Office 95

Avionics, ferry kit spares and instruments.

3. Manager's Office - far end of Hangar

4. Main Shop Area

a) Semi-assembled aircraft (standing on leased trolleys etc.)
b) Racks of B.O. and P.A. items
c) W.I.P. on benches
d) A.G.S. items in racks and cupboards to be consolidated and stacked
e) Part finished items on racks
f) Jetstream W.I.P. stores
g) Jigs.

B. MAIN CORK HANGAR (Colney Street)

1. Herald Product Support Stores - Bay 15

a) Jetstream Product Support Stores.

2. Bay 16 & 17

b) Jetstream manufactured W.I.P. stores

3. Main Hangar Area

a) Wiring loom area - W.I.P.
b) Tailplane area - W.I.P. (also jigs and leased trolley)
c) Ground Equipment e.g.Jacks supporting aircraft.

C. A. HANGAR

1. Central Bonded Stores & Quarantine Area

a) High value P.A. items
b) High value B.O. items
c) A.G.S. Stores

2. Pre Selection Stores

a) Manufactured components - Twelve cabin pressure gauges

3. Bloomingdale Shop

a) Imported items e.g. de-icers.

4. Tool Stores

a) Jetstream special tools

D. PARK STREET

1. Test House - Test Tank with aircraft, (experimental cooling rig? ownership)

2. Hangar

a) Jetstream stores - P.A. items, including engines
b) High value items
c) Mk.3 manufactured items on mezzanine floor

3. Aircraft scrapped Fuselages

a) Two fuselages - Mk.1 and Mk.3

E. OUTLYING BUILDINGS

1. Terminal Building

a) Jetstream Product Support Stores items -

2. Fuel Line Test Shed (rear of A. Hangar)

a) W.I.P.

F. Various propellers, AZ 14 and A16 Engine

G. OTHER ITEMS

1. Stores at Export Packing Services Limited

2. Jigs and Specific production aids in B1 and Main Cork Hangar

3. Flight and Wind test models.

THE SECOND SCHEDULE above referred to

PART A Aircraft

Construction No.	British Registration Mark	Mk. or Series
243	G-8-13	1
200 (Prototype)	G-ATXJ (Production number P.P.4)	1
201	G-ATXK	1
203	G-AXEK	1
234	G-8-II	1
241	G-AXEX	1
207	G-AXEL	1
U.S.A.F. Aircraft not complete		
219		3M
226		3M
228		3M
232		3M
236		3M
239		3M
242		3M
244		3M
247		3M
250		3M
260		3M

Demonstration fuselage

PART B.

1. Spares held at London Airport
2. Spares held at Field Aircraft Services Limited

3. Ferry Kits held by I.J.C. in U.S.A.

4. U.S.A.F. spares at Export Packing Services Limited

5. U.S.A.F. spares stowed at BI hanger offices

6. U.S.A.F. Propellers and Garrett Engines

7. Propellers at Herts & Sussex Aviation Limited.

8. Propellers ex Shorts

9. Spares etc. at C.S.E. Aviation

10. Spares held by I.J.C. or other parties in U.S.A. or Canada

11. Ferry Kits located on aircraft in the U.S.A. or Canada

12. Engines at R.R.T.I. in France.

13. Mono-rail Crane in BI Hangar.

14. Half-interest in test tank.

SIGNED by the said RICHARD NORMAN DARBEY LANGDON in the presence of:-

Martin Howard
11, Old Jewry,
London E.C.2.
Solicitor.

SIGNED by
for and on behalf of AMERICAN JETSTREAM INC. in the presence of:-

[illegible]
[illegible]
[illegible]
Solicitor.

P. 90a
BK-2Sa (Rev. Nov.)

United States District Court

FILED

2

FOR THE Southern District of New York

MAR 3 1971

ROY BABITT
REFEREE IN BANKRUPTCY

In the matter of

Airspur Corporation a/k/a
Airspur New York,

Bankrupt

CLAIM NO
No. 70-B-577

(Important—Insert name of bankrupt or debtor above)

PROOF OF CLAIM IN BANKRUPTCY

J. R. Tipton, of No. 710 Orange Street,
(Name of Person Signing Below)

in Ashland (City), County of Ashland, State of Ohio Zip Code 44805, says:

1. (a) IF CLAIMANT IS AN INDIVIDUAL, check here ____: That he is the claimant herein.
(b) IF CLAIMANT IS A PARTNERSHIP, check here ____ and complete section (b).
That he is a member of ____ (Partnership Name), a co-partnership, composed of the undersigned, and ____, of ____ (City), State of ____, and carrying on business at No. ____ Street, in ____ (City), State of ____.
(c) IF CLAIMANT IS A CORPORATION, check here X and complete section (c).
That the undersigned is the Vice President (Official Title) of Ohio Real Property, Inc. (Corporate Name), a corporation organized under the laws of the State of Ohio, and carrying on business at No. 710 Orange Street, in Ashland (City), State of Ohio, and is duly authorized to make this proof of claim on its behalf.
(d) IF MADE BY AGENT OR ATTORNEY, check here ____ and complete section (d).
That the undersigned is the agent or attorney of ____ (Creditor), of No. ____ Street, in ____ (City), State of ____; that he is duly authorized by the creditor named above to make this proof of claim in his behalf; that said proof cannot be made by the above-named creditor in person because ____

2. That the above-named bankrupt xxxxxxxx was, at the time of the filing of the petition herein, and still is, justly and truly indebted xxxxxxx to the claimant in the sum of (continued on page 2 hereof) xx

3. That the consideration of this debt (or liability) is as follows: ____
(continued on page 2 hereof)

4. That no part of the debt xxxxxxxx has been paid xxx

5. That there are no set-offs or counterclaims to the debt xxxxxxxxxxxx

6. That claimant does not hold, and has not had or received, any security for the debt xxxxxxxxx, nor has any person by the claimant's order or knowledge or belief had or received any security for the debt xxxxxxxxx for the claimant's use xxxxx

7. [If the debt or liability is founded upon an instrument of writing.] That the instrument upon which the debt xxxxxxxx is founded is attached hereto xxxxxxxxx

8. [xxxxxxxxxxx

P. 91a

Proof Of Claim In Bankruptcy

In the matter of	(
	(In Bankrupt
Airspur Corporation a/k/a	(
Airspur New York,	(No. 70-B-577
	(
Bankrupt	(

2. (continued) One Hundred Fourteen Thousand Seven Hundred Fifty Dollars ($114,750), consisting of One Hundred Twelve Thousand Five Hundred Dollars ($112,500) in principal amount and Two Thousand Two Hundred Fifty Dollars ($2,250) interest due and payable on July 1, 1970, plus interest from and after July 1, 1970 until paid.

3. (continued) the sum of One Hundred Twelve Thousand Five Hundred Dollars ($112,500) paid to the above-named bankrupt by check of Ohio Real Property, Inc., dated April 17, 1969, for Note No. 7 of the $3,750,000 issue of Five Year, Eight Percent Notes of said bankrupt due July 24, 1974, which note is in the principal amount of One Hundred Twelve Thousand Five Hundred Dollars ($112,500). Pursuant to the terms of the Purchase Agreement dated as of July 24, 1969, providing for the issuance of said notes, Bankers Trust Company and Chemical Bank declared the entire principal amount of all of said notes to be due and payable on September 24, 1970. Said declaration was separately addressed and delivered to each of the above-named bankrupt and Jerome Lipper, Esq., as Trustee of said bankrupt. Bankers Trust Company has filed a copy of the said Purchase Agreement with its Proof of Claim in this cause, as Trustee of various trust funds, in respect of $1,875,000 in principal amount of the aforesaid notes, and said Agreement is hereby incorporated herein by this reference.

No. 7 $112,500.00

AIRSPUR CORPORATION

New York, New York

FIVE YEAR, EIGHT PER CENT NOTE

DUE July 24, 1974

AIRSPUR CORPORATION, a corporation organized and existing under the laws of the State of Delaware (herein called the "Corporation") for value received hereby promises to pay to

OHIO REAL PROPERTY, INC. or his registered assigns five years from date hereof (unless before that date this note shall have been called for redemption and provision made for the payment of the redemption price hereof) the principal sum of ONE HUNDR. TWELVE THOUS.FIVE HUNDDOLLARS ($112,500.) with interest thereon from the date of issue at the rate of eight per cent (8%) per annum payable at the office of the Corporation, New York, New York in quarterly installments on the first day of January, the first day of April, the first day of July and the first day of October following the date hereof.

This note is one of an authorized issue of five year eight per cent notes of the Corporation limited to the aggregate principal amount of Three Million Seven Hundred and Fifty Thousand Dollars ($3,750,000), all of like tenor except as to denomination.

All of the notes of this issue rank equally and ratably without priority of any of said notes over any other by reason of date or priority in time of the issue or negotiation thereof or otherwise. This note is not transferable by endorsement or otherwise than by surrender hereof for cancellation and the issue of a new note of like tenor in the name of the transferee and the registration of the transfer upon the books kept by the Corporation for that purpose at its principal office in the City and State of New York; the Company hereby agreeing at any time and from time to time to make transfers of this note as directed by the above named payee and to issue new notes of similar tenor in the aggregate principal amount of the then unpaid principal hereon.

This note is redeemable at any time prior to maturity by the Corporation at its option as a whole or from time to time in part upon at least thirty (30) days notice at the principal amount thereof plus accrued interest to the date fixed for redemption. Such notice to be by mail and to be addressed to the holder thereof at the address as indicated in the books of the Corporation. If this note shall be called for redemption and payment of the redemption price shall be duly provided by the Corporation, interest shall cease to accrue hereon from and after the date for redemption fixed in the notice thereof.

The Corporation will not pay any dividends upon any share of stock of the Corporation, unless all interest due on or prior to the date of the payment of any dividend on the notes of this issue shall have been or be paid in full.

This note is the corporate obligation of the Corporation only and no recourse shall be had for the payment of the principal of this note or the interest hereon, against any present, past or future stockholder, officer or director of the Corporation, either directly or indirectly through the Corporation by virtue of any statute or the enforcement of any assessment or otherwise; all such liability of said stockholders, directors and officers, as such, being released by the registered owner hereof by the acceptance of this note and as part of the consideration of the issue hereof.

The sale or transfer of this Note is subject to the provisions of the Federal Securities Act of 1933, as amended, and to the terms of a Purchase Agreement dated as of July 24, 1969 among Airspur Corporation and certain Purchasers identified therein.

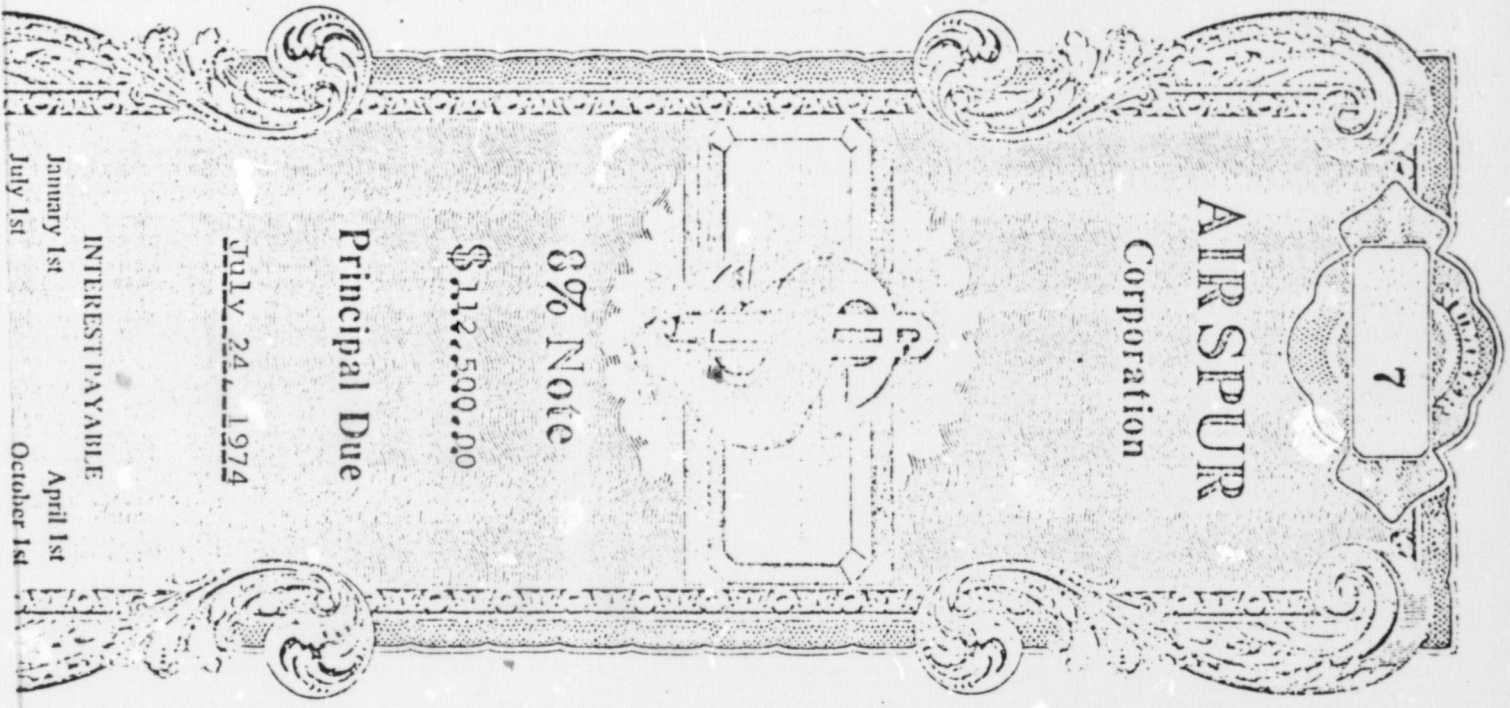
IN WITNESS WHEREOF, AIRSPUR CORPORATION, New York, New York, has caused its corporate seal to be affixed hereto, attested by its secretary or assistant secretary and these presents to be signed in its name by its president or Chairman, all as of the 24th day of July, 1969.

AIRSPUR CORPORATION

By: ~~President~~ Chairman

Attest:

Secretary



FOR VALUE RECEIVED, I/We hereby sell, assigned and transfer unto..... .....

.....

.....

Note represented by the within certificate and do hereby irrevocably constitute and appoint

....

..... *Attorney*

to transfer the said Note on the Books of the within named Corporation with full power of substitution in the premises.

Dated, ... *19*.....

In presence of .....

.....

OHIO REAL PROPERTY, INC.
710 Orange Street
Ashland, Ohio 44805

March 1, 1971

Honorable Roy Babitt
Referee In Bankruptcy
Room 237
United States Court House
Foley Square
New York, New York 10007

In the matter of Airspur Corporation
In Bankruptcy No. 70-B-577

Dear Sir:

Enclosed for filing is the Proof of Claim of Ohio Real Property, Inc. in the above-captioned matter.

You are hereby requested that all notices to which Ohio Real Property, Inc. may be entitled be addressed to it in care of its counsel, Stolar, Heitzmann & Eder, 515 Olive Street, Suite 1700, St. Louis, Missouri 63101, Attention: John W. Walbran (Telephone: Area Code 314, 231-2800).

A copy of Note No. 7 of the $3,750,000 issue of Five Year, Eight Percent Notes of Airspur Corporation upon which the claim of Ohio Real Property, Inc. is founded is enclosed with the Proof of Claim and the original of said note which is filed therewith. Upon allowance of the claim, permission to withdraw the original of the said note is hereby requested, and, upon the granting thereof, the return of said original note in the enclosed, self-addressed, stamped envelope is respectfully requested.

Very truly yours,

OHIO REAL PROPERTY, INC.

By J. R. Tipton, Vice Pres.
J. R. Tipton

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Bankruptcy
No. 70 B 577

- -x

IN THE MATTER OF:

: NOTICE OF FILING OF ASSIGNMENT OF CLAIM
: NO. 229

Airspur Corporation a/k/a Airspur New York :

Bankrupt
XXXXXX :

APR 5 1972

ROY BABITT
REFEREE IN BANKRUPTCY

- -x

TO: Ohio Real Property
710 Orange Street, Ashland, Ohio 44805

Pursuant to General Order 21, subd. 3 of the General Orders of the Supreme Court of the United States, in Bankruptcy, I hereby advise you that there has been filed in this office an assignment to L.J.Rauth, as trustee,c/o Howard Lutz,Lutz & Oxley,Esqs.,100 W. Main St, Ashland, Ohio 44805 , of the claim of Ohio Real Property against Airspur Corporation in the sum of $114,750.00 plus interest , (Cl. # 229 ,)

If no objections are entered by you on or before the 20th day of April ,19 72 , I shall make an order subrogating L.J.Rauth to your rights as original claimant.

APR 21 1972

DATED: NEW YORK, NEW YORK
April 5, 1972

ROY BABITT
REFEREE IN BANKRUPTCY

Referee in Bankruptcy
United States Court House
Foley Square, New York,N.Y.

The assignee herein, L.J. Rauth is hereby subrogated to the rights of the assignor-claimant herein, Ohio Real Property to claim No. 229 in the sum of $ 114,750.00 plus interest

DATED: NEW YORK, NEW YORK
April 21, 1972

Referee in Bankruptcy

FILED
APR 5 1972
ROY BABITT
FREE IN BANKRU

CONFIRMATION OF ASSIGNMENT

WHEREAS, on May 14, 1971, the stockholders of Ohio Real Property, Inc., an Ohio corporation (the "Company"), elected to dissolve and completely liquidate the Company, and adopted a Plan Of Dissolution And Complete Liquidation Of The Company (the "Plan"); and

WHEREAS, pursuant to the Plan, the Company sold all of its assets, excepting only cash accounts and other receivables, claims for tax refunds and certain securities of Airspur Corporation; and

WHEREAS, the Company has distributed to its stockholders, in cash, all or substantially all of the proceeds of the sale of its assets, and will so distribute the balance, if any, thereof, on April 28, 1972; and

WHEREAS, in order to effect and assure the complete liquidation of the Company on or before April 28, 1972, the Company assigned, transferred, set over, conveyed and confirmed unto L. J. Rauth, as Trustee, and his successors in trust, under a certain Trust Agreement dated December 27, 1971, all claims and interests of the Company arising out of or resulting from the following securities of Airspur Corporation, a Delaware corporation, adjudicated bankrupt, in Cause No. 70-B-577, U.S.D.C., S.D.N.Y., and all claims and interests of the Company arising out of or resulting therefrom, to wit: (i) 3,750 shares of $.10 par value Common Stock, represented by Certificate No. 11, for which the Company paid to Airspur Corporation the sum of $37,500 in cash (the "Stock"); and (ii) a Five Year, Eight Per Cent Note Due July 24, 1974, represented by Certificate No. 7, in the principal amount of $112,500, for which the Company paid to Airspur Corporation the sum of $112,500 in cash (the "Note"), which Stock, Note, claims and interests the Company has been informed and has reason to believe are worthless but which the Company deems it inappropriate to abandon during the pendency of the aforesaid proceedings;

NOW, THEREFORE, in consideration of the premises, the Company hereby assigns, transfers, sets over, conveys and confirms unto the aforementioned Trustee, L. J. Rauth, hereby ratifying its prior assignment, transfer, setting over, conveyance and confirmation unto the said Trustee of, the Stock and the Note, and all claims and interest of the Company arising out of or resulting therefrom, including but not limited to the claim filed by the Company in respect of the Note in the aforesaid bankruptcy proceedings on or about March 3, 1971, a copy of which claim is attached hereto, subject, as to the Note, however, to the terms of the legend affixed to the face of the Note if and to the extent applicable in respect of the aforementioned claim filed by the Company in respect of the Note in the aforesaid bankruptcy proceedings as aforesaid, and subject as to the Stock to the Notice affixed on the reverse side of the Certificate representing the same, being Certificate No. 11.

TO HAVE AND TO HOLD the Stock and the Note, and all claims and interests of the Company arising out of or resulting therefrom, unto the aforesaid Trustee, his successors and assigns forever.

IN WITNESS WHEREOF, Ohio Real Property, Inc. has caused these presents to be executed and attested by its undersigned officers hereunto duly authorized this _____ day of _____, 1972.

OHIO REAL PROPERTY, INC.

(No Seal)

By R. C. Coulter Jr.
Vice- President

Attest: L. J. Rauth
L. J. Rauth, Secretary

STATE OF OHIO)
) SS
COUNTY OF ASHLAND)

On this 24th day of March, 1972, before me appeared R. C. Coulter Jr., to me personally known, who being by me duly sworn did say that he is a Vice president of Ohio Real Property, Inc., a corporation of the State of Ohio, and that the foregoing instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and said R. C. Coulter Jr. acknowledged said instrument to be the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Jean Ross
Notary Public JEAN ROSS, Notary Public
My Commission Expires Aug. 4, 1973

My commission expires: Aug. 4, 1973

P. 98a

(Rev. Nov. 1966)

United States District Court

FOR THE
Southern District of New York

In the matter of

Airspur Corporation a/k/a
Airspur New York,

Bankrupt

(Important—Insert name of bankrupt or debtor above)

In Bankruptcy

No. 70 B-577

PROOF OF CLAIM IN BANKRUPTCY

J. R. Tipton (Name of Person Signing Below), of No. 710 Orange Street in Ashland (City), County of Ashland, State of Ohio Zip Code 44805, says:

1. (a) IF CLAIMANT IS AN INDIVIDUAL, check here ____: That he is the claimant herein.
   (b) IF CLAIMANT IS A PARTNERSHIP, check here ____ and complete section (b). That he is a member of ____ (Partnership Name), a copartnership, composed of the undersigned, and ____ of ____ (City), State of ____, and carrying on business at No. ____ Street, in ____ (City) State of ____.
   (c) IF CLAIMANT IS A CORPORATION, check here X and complete section (c). That the undersigned is the Vice Preside[nt] (Official Title) of Ohio Real Property, Inc. (Corporate Name) a corporation organized under the laws of the State of Ohio, and carrying on business at No. 710 Orange Street, in Ashland (City), State of Ohio and is duly authorized to make this proof of claim on its behalf.
   (d) IF MADE BY AGENT OR ATTORNEY, check here ____ and complete section (d). That the undersigned is the agent or attorney of ____ (Creditor) of No. ____ Street, in ____ (City) State of ____; that he is duly authorized by the creditor named above to make this proof of claim in his behalf; that said proof cannot be made by the above-named creditor in person because ____
2. That the above-named bankrupt was, at the time of the filing of the petition herein, and still is, justly and truly indebted to the claimant in the sum of (continued on page 2 hereof)
3. That the consideration of this debt (or liability) is as follows: (continued on page 2 hereof)
4. That no part of the debt has been paid.
5. That there are no set-offs or counterclaims to the debt.
6. That claimant does not hold, and has not had or received, any security for the debt, nor has any person by the claimant's order or knowledge or belief had or received any security for the debt for the claimant's use.
7. [If the debt or liability is founded upon an instrument of writing.] That the instrument upon which the debt is founded is attached hereto
8. [That the said debt was due as set forth in paragraph above; that the said debt is evidenced by a note, or other negotiable instrument, which is attached hereto; and that no judgment has been rendered thereon.
9. This claim is filed as an (UNSECURED) CLAIM. $114,750, plus interest as prayed (Total Amount Claimed)

Dated at Ashland, Ohio, this ____ day of March 19 71

Signed ____ (J.R. Tipton)
(Name of individual, agent, officer, or partner signing this claim)

NOTE: Failure to complete all necessary parts of this form may result in disallowance.
PENALTY FOR PRESENTING FRAUDULENT CLAIM—Fine of not more than $5,000 or imprisonment for not more than five years or both—Title 18, U.S.C., Sec. 152.

(When Signed Mail this Proof of Claim to Referee in Bankruptcy)

FPI B1—11-7-69-500M-4178

Proof Of Claim In Bankruptcy

In the matter of	(
	(In Bankruptcy
Airspur Corporation a/k/a Airspur New York,	(
	(No. 70-B-577
Bankrupt	(

2. (continued) One Hundred Fourteen Thousand Seven Hundred Fifty Dollars ($114,750), consisting of One Hundred Twelve Thousand Five Hundred Dollars ($112,500) in principal amount and Two Thousand Two Hundred Fifty Dollars ($2,250) interest due and payable on July 1, 1970, plus interest from and after July 1, 1970 until paid.

3. (continued) the sum of One Hundred Twelve Thousand Five Hundred Dollars ($112,500) paid to the above-named bankrupt by check of Ohio Real Property, Inc., dated April 17, 1969, for Note No. 7 of the $3,750,000 issue of Five Year, Eight Percent Notes of said bankrupt due July 24, 1974, which note is in the principal amount of One Hundred Twelve Thousand Five Hundred Dollars ($112,500). Pursuant to the terms of the Purchase Agreement dated as of July 24, 1969, providing for the issuance of said notes, Bankers Trust Company and Chemical Bank declared the entire principal amount of all of said notes to be due and payable on September 24, 1970. Said declaration was separately addressed and delivered to each of the above-named bankrupt and Jerome Lipper, Esq., as Trustee of said bankrupt. Bankers Trust Company has filed a copy of the said Purchase Agreement with its Proof of Claim in this cause, as Trustee of various trust funds, in respect of $1,875,000 in principal amount of the aforesaid notes, and said Agreement is hereby incorporated herein by this reference.

No. 7 $112,500.00

AIRSPUR CORPORATION

New York, New York

FIVE YEAR, EIGHT PER CENT NOTE

DUE July 24, 1974

AIRSPUR CORPORATION, a corporation organized and existing under the laws of the State of Delaware (herein called the "Corporation") for value received hereby promises to pay to

OHIO REAL PROPERTY, INC. or his registered assigns five years from date hereof (unless before that date this note shall have been called for redemption and provision made for the payment of the redemption price hereof) the principal sum of ONE HUNDR. TWELVE THOUS.FIVE HUNDDOLLARS ($112,500.) with interest thereon from the date of issue at the rate of eight per cent (8%) per annum payable at the office of the Corporation, New York, New York in quarterly installments on the first day of January, the first day of April, the first day of July and the first day of October following the date hereof.

This note is one of an authorized issue of five year eight per cent notes of the Corporation limited to the aggregate principal amount of Three Million Seven Hundred and Fifty Thousand Dollars ($3,750,000), all of like tenor except as to denomination.

All of the notes of this issue rank equally and ratably without priority of any of said notes over any others by reason of date or priority in time of the issue or negotiation thereof or otherwise.

This note is not transferable by endorsement or otherwise than by surrender hereof for cancellation and the issue of a new note of like tenor in the name of the transferee and the registration of the transfer upon the books kept by the Corporation for that purpose at its principal office in the City and State of New York; the Company hereby agreeing at any time and from time to time to make transfers of this note as directed by the above named payee and to issue new notes of similar tenor in the aggregate principal amount of the then unpaid principal hereon.

This note is redeemable at any time prior to maturity by the Corporation at its option as a whole or from time to time in part upon at least thirty (30) days notice at the principal amount thereof plus accrued interest to the date fixed for redemption. Such notice to be by mail and to be addressed to the holder thereof at the address as indicated in the books of the Corporation. If this note shall be called for redemption and payment of the redemption price shall be duly provided by the Corporation, interest shall cease to accrue hereon from and after the date for redemption fixed in the notice thereof.

The Corporation will not pay any dividends upon any share of stock of the Corporation, unless all interest due on or prior to the date of the payment of any dividend on the notes of this issue shall have been or be paid in full.

This note is the corporate obligation of the Corporation only and no recourse shall be had for the payment of the principal of this note or the interest hereon, against any present, past or future stockholder, officer or director of the Corporation, either directly or indirectly through the Corporation by virtue of any statute or the enforcement of any assessment or otherwise; all such liability of said stockholders, directors and officers, as such, being released by the registered owner hereof by the acceptance of this note and as part of the consideration of the issue hereof.

The sale or transfer of this Note is subject to the provisions of the Federal Securities Act of 1933, as amended, and to the terms of a Purchase Agreement dated as of July 24, 1969 among the Corporation and certain Purchasers named therein.

IN WITNESS WHEREOF, AIRSPUR CORPORATION, New York, New York, has caused its corporate seal to be affixed hereto, attested by its secretary or assistant secretary and these presents to be signed in its name by its president or ~~vice president~~ Chairman, all as of the 24th day of July, 1969.

AIRSPUR CORPORATION

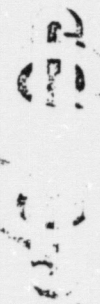
By: ~~President~~ Chairman

Attest:

Secretary

AIRSPUR

Corporation



8% Note

$112,500.00

Principal Due

July 24, 1974

INTEREST PAYABLE

January 1st — April 1st

July 1st — October 1st

FOR VALUE RECEIVED, I/we hereby sell, assign and transfer unto.....

.....

.....

Note represented by the within certificate and do hereby irrevocably constitute and appoint

.....

.....

Attorney to transfer the said Note on the Books of the within named Corporation with full power of substitution in the premises.

Dated.....*19*.....

In presence of

.....

.....

L. J. Rauth
c/o Eagle Rubber Co., Inc.
710 Orange Street
Ashland, Ohio 44805

Honorable Roy Babitt
Referee in Bankruptcy
Room 237
U. S. Courthouse
Foley Square
New York, New York 10007

Re: In the Matter of Airspur Corporation, In Bankruptcy
No. 70-B-577

Dear Judge Babitt:

Enclosed, for filing in the above-captioned matter, is an Assignment of the claim of Ohio Real Property, Inc., in the said matter.

From and after the filing of the aforementioned Assignment it is requested that all notices which, but for such Assignment, Ohio Real Property, Inc. would have been entitled to receive, be addressed to the undersigned Trustee in care of Howard Lutz, Lutz & Oxley, 100 West Main Street, Ashland, Ohio 44805 (telephone: area code 419, 324-1561 or 4533), counsel for the undersigned Trustee.

Very truly yours,

L. J. RAUTH, Trustee

P. 103a

Ohio

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SEP 6 1972

ROY BABITT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER

OF

AIRSPUR CORPORATION, a/k/a AIRSPUR NEW YORK,

Bankrupt.

No. 70 B 577

OBJECTION TO CLAIM and OFFSETS, CROSS-CLAIM and REQUEST for AFFIRMATIVE JUDGMENT

JEROME LIPPER, the trustee herein, objects to claim number 229 filed by Ohio Real Property, Incin the sum of $114,750.00 , and cross claims and moves for affirmative judgment against the said claimant on the following grounds:

1. Claimant was a stockholder of the bankrupt, with its agent or representative on the Board of Directors, was privy to the operations and transactions of the bankrupt from or about the date of incorporation and shared equally in the management and control of the bankrupt.

2. On July 24, 1969, 3,750 original issue shares of common stock of the bankrupt were issued to Ohio Real Property, Inc. for the sum of $37,500.00

3. On July 24, 1969, Ohio Real Property, Inc entered into an agreement collectively with Airspur Corporation (Airspur), the bankrupt, and the stockholders of Airspur, namely: Mercantile Planners Company, The Value Line Special Situation Fund, Inc., Chemical Bank, as Trustee of the Chemical Bank

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New York Trust Company Commingled Employee Benefit Special Fund, Beechmont Company, as Agent, Diebold Technology Venture Fund, Inc., Bankers Trust Company , D.B. Glynn & Company, designated as Group B stockholders, and B.V. Brooks, Brooks, Torrey & Scott, and Warren E. Kraemer Associates, Inc. designated as Group A stockholders. (Exhibit A).

4. Under the terms of said agreement, which was entered into for the best interests of and for the benefit of Airspur and the parties therein stated, Group B stockholders covenanted to impose certain controls over Airspur, among which was the power to approve or ratify any contract or act submitted for approval by the Board of Directors of Airspur to the shareholders of the company, and claimant Ohio Real Property, Inc.was kept informed of the negotiations, received memoranda pertaining thereto, and received drafts of proposed agreements relating to the transactions herein mentioned for its consideration and/or approval.

4(a). The claimant was neglectfull and failed to perform its obligations and breached said agreement with Airspur in the manner and as to the transactions as hereinafter mentioned.

5. Richard Mersinger (Mersinger) was designated by the claimant as its agent and representative to act on the Board of Directors of the bankrupt.

6. Mersinger was elected to the Board of Directors of the bankrupt on July, 24, 1969.

7. As a director and officer of the bankrupt, Mersinger owed a duty to the bankrupt to use that degree of diligence, care and skill which an ordinary, prudent

man would exercise under similar circumstances in like positions.

8. As a director and officer of the bankrupt, Mersinger had a duty to know what was transpiring in the business affairs of the corporation, and, in the assumption of his fiduciary position, he had a duty to act in good faith andnot to close his eyes to what was going on around him.

9. As a director and officer Mersinger was responsible for acts of omission and neglect of his duties.

10. As will hereinafter be shown, Mersinger breached his duties as an officer and director of the bankrupt, whichresulted in financial disaster and the bankruptcy of Airspur.

11. At all times hereinafter mentioned, the claimant,Ohio Real Prop., had or is chargeable with knowledge of the negligent acts and or omissions of its agent or representative, Mersinger, as a member of the board of directors of Airspur.

12 Mersinger acted or omitted to act or was negligent as a director of Airspur as a result of which Airspur was damaged as hereinafter mentioned.

13. Between on or about January 1966 to about 1969 or 1970, Warren E. Kraemer (Kraemer), president of Airspur, operated an agency in the United States on behalf of Handley Page, Ltd., an English corporation, (original Handley) which was to engagedin the business of manufacturing airplanes in England.

14. Kenton R. Cravens, deceased, (Cravens) was a stockholder and officer as well as director of K. R. Cravens Inc. (Cravens Inc.) and of International Jetstream Corp. (International).

15. During the aforesaid period, International was the exclusive distributor for original Handley and Cravens Inc., which financed or purchased planes and had them shipped or transferred to International.

16. In or about 1968 or 1969 or prior thereto, original Handley had embarked upon or contemplated the manufacture of a new type of custom-built plane designed for short hops and known as the Handley Page Jetstream, (Jetstream).

17. From about 1968 to 1969 and prior thereto, original Handley was having financial difficulties.

18. Kraemer and Cravens met from time to time to discuss their respective relationship to and interests in the original Handley and in the development and manufacture of Jetstream planes by the original Handley and a successor company, in light of the financial difficulties of the original Handley.

19. Kraemer and Cravens, motivated by self-interest and personal profit, conceived and implemented a plan to maintain such interest as they had in the original Handley or its successor company by refinancing

and revitalizing the original Handley so that it could continue the manufacturing of airplanes, particularly the Jetstream planes.

20. The plan contemplated the following:

a. Kraemer was to form a corporation which was thereafter known as Airspur.

b. The company that was to be formed by Kraemer was to acquire companies which had routes or some equipment already engaged in such business.

c. The company that was to be formed by Kraemer was to use the Jetstream as its main airplane carrier. The planes were to be purchased from International, the sole distributor for said plane in the United States.

d. Cravens was to assist in or help acquire financing from Kraemer's corporation which was to be formed as aforesaid, and in addition, he was to attempt to acquire financing in order to take over the defunct original Handley.

e. The corporation to be formed by Kraemer was to purchase a substantial number of Jetstreams from International.

21. Kraemer and Cravens then implemented their plan as aforesaid, and Kraemer formed Airspur.

22. The plan, or parts thereof, were disclosed by Kraemer to all the directors of Airspur in or about 1969.

23. Investments in Airspur were solicited from third parties by said Kraemer, Cravens and Mersinger at about

the same time Cravens was negotiating with the receiver of Handley Page to purchase, revitalize and refinance the operations of Handley Page and, particularly, its production of the Jetstream.

24. In July, 1969, Ohio Real Property advanced to Airspur an approximate total of $150,000.00

25. On August 7, 1969, a receiver was appointed by the English Court for the, by then, totally bankrupt original Handley.

26. On August 15, 1969 and on October 17, 1969, a company formed and/or controlled by Cravens, contracted with the receiver of the original Handley to purchase the original Handley and continue operations as Handley Page Aircraft, Ltd., (Handley II).

27. At about the time Airspur had been formed, Mersinger was elected a director of Airspur, pursuant to an arrangement or an agreement as hereinbefore mentioned, to protect the respective investments and/or loans made by Ohio Real Prop., as hereinbefore mentioned, and he continued as director until about August 31, 1970, when Airspur was adjudicated a bankrupt.

28. Claimant had knowledge or is chargeable with knowledge that Kraemer, an officer of Airspur, was engaged in negotiations with Cravens of International for the alleged purchase of certain Jetstream aircraft, manufactured or to be manufactured by Handley II.

29. The negotiations between Airspur and the proposals thereto were that Airspur was to acquire (20) twenty Jetstream aircraft and obtain an option on ten (10) additional aircraft.

30. The negotiations contemplated that the first five or eight Jetstreams contracted for would cost $445,000.00 each, plus $20,000.00 for factory installed optional equipment, that the price of nine through twenty of said planes was to be $520,000.00 each; with a 10% down payment for each plane purchased, and the remainder to be paid over five to seven years at 6-1/4% interest, based on the United Kingdom Government (E.C.G.D.) financing or other financing which would minimize the cash investment of Airspur and which cash was required in developing the future operations of Airspur's business.

31. The negotiations were that the purchase agreement, if any, was contingent upon a number of factors, including replacement with more powerful engines, modification of certain parts of the plane which were defective, the availability of financing as hereinbefore mentioned, and the approval of the Federal Aviation Administration that the Jetstream could be flown for public transportation.

32. Negotiations continued between Crayons, Kraemer, International and Airspur, but remained in a state of flux and never culminated into an agreement between

Airspur and International.

33. In December of 1969, by arrangement between Kraemer and Cravens, Airspur gave $100,000.00 to International, allegedly as some form of token, subject to an agreement being actually entered into, if any, between International and Airspur for the alleged purchase of twenty (20) Jetstream aircraft, pursuant to specific conditions submitted by Airspur as hereinbefore mentioned.

34. Cravens and his associates could not raise the necessary financing or were short the money to finance the contemplated Handley II reorganization and its operations.

35. At the same time, International was in financial difficulties or insolvent.

36. Cravens needed money for International or Handley II, or to meet past due bills.

37. Cravens and Kraemer then conceived a plan whereby Airspur would lend to International a sum of $906,850.00.

38. Airspur did lend to International the sum of $906,850.00 and received therefor notes of International for said sum.

39. Said notes had no guarantors, but were merely notes executed by International.

40. The said notes were not secured in any manner.

41. On or about January or February of 1970, the financial conditions of International, or its affiliated companies, deteriorated, and the attempts to rehabilitate and refinance the original Handley were failing, whereupon a plan was conceived by Cravens and Kraemer to eliminate the debt owed by International to Airspur in the sum of $906,850.00, represented by International's notes, and the $100,000.00 token deposit hereinbefore mentioned.

42. To implement said plan, it was arranged by the parties hereinbefore mentioned and others that International do the following:

a. Purportedly arrange for a sale of four (4) Jetstream aircraft to Airspur,

b. Make it appear that Airspur had possession of four (4) Jetstream aircraft,

c. Make it appear that Airspur had a security interest in the said four (4) Jetstream planes, and

d. Arrange that the notes for the sum of $906,850.00 be returned by Airspur to International for alleged payment of four (4) Jetstream planes under the guise of the plan hereinbefore mentioned:

42A. The foregoing plan was implemented, and the notes for $906,850.00 were marked "paid February 24, 1970" and were returned by Airspur to International on the basis that Airspur had title, possession and security interest in four (4) Jetstream planes.

43. Thereafter and on or about February 27, 1970, three (3) Jetstream aircraft were flown to Northwest Industries Ltd., located in Edmunton, Alberta, Canada, a subcontractor of Cravens Inc. or International, or their interrelated or affiliated company.

44. The facts were that on February 24, 1970, when the notes were returned as aforesaid, Airspur neither had title, possession nor a security interest in any four (4) or even three (3) Jetstream planes.

45. Attempts were made thereafter to purportedly transfer three (3) Jetstream planes to Airspur, which planes did not have the necessary modifications or changes of engines, which could not be used for public air transportation and which had not been financed as negotiated for as hereinbefore mentioned.

46. At the January 6, 1970 meeting of the Board of Directors, at which Mersinger was present, it was reported that continuing efforts were being made to finance the Jetstream fleet. At the February 13, 1970 meeting, at which Mersinger was present, further reports were made of the difficulties involved with the financing of the Jetstream aircraft. It was also reported that four Jetstream aircraft were at that time in Canada.

47. In reality, there were no Jetstream aircraft in Canada, and by the February meeting, it was obvious that

no financing would be forthcoming from the British Government. Yet, on February 24, 1970, with the acquiescence of Mersinger the International Jetstream notes were marked "Paid February 24, 1970" and were returned by Airspur to International Jetstream on the pretense that Airspur had title, possession and a security interest in four Jetstream planes.

48 Mersinger, having been forewarned by previous errors in projections submitted to him and by other loose acts and statements of officers and directors of Airspur, and having knowledge of the aforementioned, had a duty to act as a prudent man managing his own property. He had, therefore, a duty to investigate and prevent the virtual gift of approximately $1,000,000.00 to International Jetstream.

49. Mersinger did not request to see or inquire as to whether a written memorandum or contract had been signed by International or Airspur as to the transactions relating to the purchase of Jetstream aircraft, or as to whether the negotiations had resulted in compliance with the necessary implementation of the proposals as set forth in paragraphs 30 and 31 supra.

50. Prior to the token $100,000.00 being given by Airspur to International and the said loan of $906,850.00 having been made and thereafter, both prior to

and when the notes were returned to International as hereinbefore mentioned Mersinger did not request a financial statement, credit report or information as to the financial responsibility of International, failed to make any investigation thereof, and had no knowledge of the financial responsibility of International.

51. Mersinger continued to neglect his duty to the bankrupt, and acquiesced in matters which led to further waste of corporate assets, to wit: In or about May, 1970, Kraemer and Mersinger along with the other directors, conceived a plan to form a corporation to be known as American Jetstream, Inc., (American Jetstream), which was to purchase the then remaining fixed assets of Handley II, even though it was common knowledge that Cravens had failed disastrously in his attempt to reorganize the original Handley company, that it was impossible to get financing from the British Government, that the Jetstream aircraft were defective, that a Jetstream aircraft had crashed over St. Moritz, Switzerland on March 6, 1970, killing at least thirteen persons, and that the Federal Aviation Administration had banned the commercial use of Jetstream aircraft in the United States.

52. Despite the above, Mersinger agreed to the purchase of the assets of Handley II, and in furtherance of the plan, American Jetstream was incorporated on or

about May 11, 1970 under the laws of the State of Delaware, with 1,000 shares of authorized common stock of the par value of 10¢ a share. A certificate to do business in New York State was filed on June 9, 1970 by American Jetstream. American Jetstream actually only issued 100 shares, with a par value of $10.00, and all of these shares were issued to Airspur.

53. On June 2, 1970, an agreement was drawn between American Jetstream and Richard N.D. Langdon, the Court-appointed receiver of Handley II, whereby American Jetstream was to pay a deposit of approximately $72,000.00 for an option to buy the remaining assets of Handley II. The deposit would be forfeited if the option was not exercised. Said agreement is attached hereto, and marked Exhibit 1.

54. Directly, or through its wholly owned subsidiary, Airspur Financial Corp., Airspur paid said sum of approximately $72,000.00, which was the required deposit for acquiring the option hereinbefore mentioned. In addition, Airspur, or through its aforementioned subsidiary, paid various sums amounting to approximately $20,000.00 to Beaumont & Sons, the attorneys who were handling the transaction in question for American Jetstream in London.

55. No other capitol investment and no other

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moneys of any kind were paid or invested by any other party.

56. Neither Airspur nor Airspur Financial Corp. received anything in return for the approximately $92,000.00 paid, as hereinbefore mentioned, except the 100 shares of American Jetstream stock, each of which share had a par value of 10¢, for a total of $10.00.

57. American Jetstream had no other assets of any kind, except the questionable option to acquire the remain[illegible]ndley II assets.

58. During the time that Airspur was paying the moneys hereinbefore mentioned, Airspur was short of operating capital, was in serious financial difficulties, and was not paying its bills as they became due.

59. The option hereinbefore mentioned had to be abandoned, and all of the $92,000.00 advanced and paid by Airspur, or Airspur Financial Corp., was lost.

60. Prior to the time assets of Airspur, and/or its subsidiary were wasted in the American Jetstream operation, Mersingerknew that millions of dollars had previously been lost in an attmept to reorganize original Handley. He knew of the errors of judgment, misrepresentations and failures in projections, financial and otherwise involved in the above venture, yet he failed to further prevent the dissipation of the assets of the bankrupt,

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failed to acquire further knowledge of relevant facts as to prevent additional waste, which amounts to wanton and reckless disregard for the consequences of his conduct as will hereinafter be shown.

61. During and around the same time that Airspur was allegedly negotiating with International, to wit: on or about September or October, 1969, the Board of Directors of Airspur, including Mersinger conferred regarding the purchase of a Caribbean area airline passenger operation known as Tradewinds Airlines, Inc. (Tradewinds), and the purchase of 100% of the common stock of Tradewinds Investment Co., an affiliate of Tradewinds. These companies were to be purchased from Berwind Corporation of Philadelphia (Berwind), the parent corporation. Tradewinds was to be renamed Airspur Caribbean, Inc.

62. Mersinger had knowledge that the capital investments and loans initially made in Airspur totalled about $4,770,000.00, and that Airspur was then in its formative stages and required a good credit rating and an image to the general public that it was financially sound and responsible so as to induce other carriers and the general public to do business with it and use its passenger services.

63. The purchase price to be paid by Airspur for the acquisition as aforementioned from Berwind was a total sum of $3,550,000.00; $1,150,000.00 in cash and $2,400,000.00 in installments.

64. During the negotiations and discussions, taking into consideration the limited capital and cash that Airspur had as against the amount necessary for expansion and to have credit extended to it, no security interest or liens were to be given to Berwind for the balance of the purchase price which was to be paid in installments.

65. Thereafter, on October 22, 1969, Airspur entered into an agreement which was closed on October 30, 1969 whereby it purchased from Berwind the common stock of Tradewinds Investment Company, with a cash payment of $1,150,000.00 and installment payments of a balance of $2,400,000.00, represented by notes.

66. Mersinger was kept informed of the negotiations, received various memoranda pertaining thereto, and received drafts of the proposed agreement between Airspur and Berwind.

67. The transaction involving Berwind was the most important acquisition undertaken by Airspur, representing an aggregate cash payment and deferred obligation, of which $1,150,000.00 cash was an immediate payment.

68. Mersinger had knowledge that the total investment in and loans made initially to Airspur was the sum of about $4,770,000.00.

69. The transaction with Berwind, involving

$3,550,000.00, was of major importance to Airspur, and claimant, by its stockholder's agreement was obligated to make a thorough investigation of the operations of the business Airspur was acquiring. It was claimant's duty to determine the probabilities of Airspur Caribbean being a successful operation, to examine the provisions of the contract relating thereto, and to recognize the effect the signing of said contract would have on the future of Airspur.

70. Despite the significance of the Berwind transaction, the claimant or its representative did not investigate the matter with the reasonsble care a businessman of ordinary prudence would have exercised in the management of his own affairs.

71. Reasonable investigation by the claimant or its representative into the operation of Tradewinds would have established that same was unsuccessful, and that the transaction was doomed to fail.

72. Claimant's representative failed and omitted to perform his duties as officer and director of Airspur, and therefore claimant, under the aforementioned agreement among stockholders, was negligent in failing to prevent the disaster which resulted from the Berwind transaction.

73. The consequences of the Berwind transaction directly resulted in the bankruptcy

of Airspur, resulting in damages to Airspur of approximately $5,000,000.00.

PLEASE TAKE FURTHER NOTICE that no date has been set for a hearing on the objection within. A hearing is subject to the Honorable Roy Babitt, Referee in Bankruptcy, setting a date on his calendar for a date certain, written notice of which will be forwarded to you or your authorized attorney.

WHEREFORE, Jerome Lipper, said trustee, prays that said claim of Ohio Real Property, Inc be disallowed, and that he recover from said claimant the amount of $6,208,904.00.

Dated: New York, New York
17th day of August, 1972

Jerome Lipper, Trustee

AGREEMENT AMONG STOCKHOLDERS

AGREEMENT dated as of July 24, 1969, among AIRSPUR CORPORATION, a Delaware corporation (hereinafter called "Airspur"), and the stockholders of Airspur named at the foot hereof (hereinafter collectively called the "Stockholders").

WHEREAS the authorized capital stock of Airspur consists of 500,000 shares of Common Stock, par value $0.10 per share (hereinafter called "Common Stock"), of which 125,000 shares are issued and outstanding;

WHEREAS the Stockholders identified at the foot hereof as "Group A Stockholders" (hereinafter collectively called "Group A Stockholders") own an aggregate of 125,000 shares of Common Stock (shares of Common Stock from time to time owned or held by Group A Stockholders being hereinafter called "Group A Stock");

WHEREAS the Stockholders identified at the foot hereof as "Group B Stockholders" (hereinafter collectively called "Group B Stockholders") have agreed to purchase an aggregate of 125,000 shares of Common Stock (shares of Common Stock from time to time owned or held by Group B Stockholders being hereinafter called "Group B Stock") and $3,750,000 aggregate principal amount of 8% Notes (hereinafter called the "Notes") of Airspur (said Group B Stockholders as holders of the Notes being hereinafter called the "Noteholders") pursuant to a Purchase Agreement, dated as of July 24, 1969, among Airspur and the Group B Stockholders (hereinafter called the "Purchase Agreement");

WHEREAS the Group B Stockholders wish to impose certain controls over Airspur as a condition to their investment in Airspur through the purchase of the Group B Stock and the Notes and it is a condition to the obligations of the Group B Stockholders to make such a purchase that this Agreement shall be duly executed and delivered by the parties hereto; and

WHEREAS it is deemed to be in the best interests of Airspur and the Stockholders that provisions be made for continuity and stability of policy for Airspur and, to that end, that the Group A Stockholders and the Group B Stockholders share equally in the management of Airspur and the control of its policy to the extent and upon the terms and conditions herein stated, and that the Group A Stockholders be restricted in their power to sell Group A Stock;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein set forth, the parties hereby agree as follows:

1. (a) Unless the prior written consent of at least a majority of the shares of the Group B Stock held by Group B Stockholders who are also Noteholders at the time outstanding shall have been obtained by Airspur, the Stockholders shall vote whether directly or by written consent all the shares of Common Stock owned or held by them against any proposal (i) to amend the Certificate of Incorporation of Airspur or the By-laws of Airspur; (ii) to sell, lease, convey or exchange all of the properties and assets of Airspur or to merge or consolidate Airspur into or with any other corporation; and (iii) to approve or ratify any contract or act submitted for approval by the Board of Directors of the Company to the Shareholders of the Company.

(b) If the requisite number of Group B Stockholders who are also Noteholders shall deem a stock split necessary as provided in Section 8.07 of the Purchase Agreement, the Stockholders shall vote all shares of Common Stock owned or held by them in favor of such stock split.

(c) At each annual meeting of stockholders of Airspur, (i) the Group A Stockholders shall have the right to nominate three of the directors (hereinafter called the "Group A Directors") to be elected at such meeting; (ii) a majority of the shares of the Group B Stock held by Group B Stockholders who are also Noteholders shall have the right to nominate three of the directors (hereinafter called the "Group B Directors") to be elected at such meeting; and (iii) the Stockholders shall vote all shares of Common Stock owned or held by them in favor of the election of such six nominees.

(d) If any vacancy shall occur on the Board between annual meetings of stockholders of Airspur for any reason whatsoever and a special meeting of stockholders of Airspur is called to elect a new director to replace such former director, then the following provisions shall apply:

(i) if the former director was a Group A Director, then the Group A Stockholders shall have the right to nominate a successor director; and

(ii) if the former director was a Group B Director, then a majority of the shares of the Group B held by the Group B Stockholders who are also Noteholders shall have the right to nominate a successor director.

The Stockholders shall vote all shares of Common Stock owned or held by them in favor of the election of the successor director so nominated.

2. Each Group A Stockholder hereby agrees not to

sell or otherwise transfer any of the Group A Stock owned or held by it or him as long as any of the Notes are outstanding and unpaid in whole or in part unless such sale or transfer shall have been consented to in advance by a majority of the shares of Group B Stock held by the Group B Stockholders who are also Noteholders.

3. The Group B Stockholders who are also Noteholders shall have the right to purchase, in connection with any underwritten public offering of shares of Common Stock of the Company, sufficient of such shares as they may deem appropriate to avoid dilution of their interests in the Company.

4. The Group A Stock and the Group B Stock shall not be sold, assigned, transferred, pledged, or otherwise disposed of, and shall not be transferred on the books of Airspur, nor, unless the Company shall have otherwise agreed (such agreement to be evidenced by a resolution adopted by the Board of Directors), shall any shares of Common Stock of Airspur be issued or sold unless the assignee, transferee, purchaser, recipient or pledgee of such shares shall agree in writing to be bound by, and to comply with, all the then effective terms and provisions of this Agreement. The assignee, transferee or pledgee of Group A Stock or Group B Stock for the purposes of this Agreement shall be deemed to be a Group A Stockholder or a Group B Stockholder, respectively, and any purchaser or recipient of newly issued shares of Common Stock shall, for purposes of this Agreement, be deemed to be a Group B Stockholder and each such assignee, transferee, pledgee, purchaser and recipient shall also be deemed to be a Stockholder.

5. So long as this Agreement shall continue in effect, the following legend shall be conspicuously written, printed or stamped on the face of all certificates for shares of all Common Stock now or hereafter issued and outstanding and on the face of all certificates issued in substitution or exchange therefor or upon a transfer thereof:

> "NOTICE: The sale, assignment, transfer, pledge or other disposition of this Certificate and of the shares of stock represented thereby and, under certain circumstances, the voting of such shares, are subject to the terms and conditions of a Purchase Agreement dated as of July 24, 1969 and an Agreement Among Stockholders dated as of July 24, 1969, as each is now in effect or as the same may have been supplemented and amended, among Airspur Corporation and the parties thereto to all the provisions of which Agreements the holder of this Certificate, by the acceptance hereof, assents. A copy of said Agreements, to which reference is hereby made, are on file at the office of Airspur."

6. In the event of the invalidity of any part or provision of this Agreement, such invalidity shall not affect then enforceability of any other part or provision of this Agreement.

7. For purposes of this Agreement, the following present members of the Board shall be deemed to have been nominated by the Group A Stockholders and elected by the Stockholders, and the following present members of the Board shall be deemed to have been nominated by the Group B Stockholders and elected by the Stockholders:

Group A Stockholders	Group B Stockholders
B. V. Brooks	Leonard Andrews
Warren E. Kraemer	Joe Benning, Jr.
Jerry W. Ryan	Richard Mersinger

8. This Agreement shall terminate on the later of (i) the payment of all principal and interest due under the Notes or (ii) the expiration of three years from the date hereof.

9. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and to their executors, administrators, successors and assigns.

10. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

AIRSPUR CORPORATION

By _____
Chairman of the Board

Attest:

_____
Secretary

Group A Stockholders:

_____
B. V. Brooks

_____
Brooks, Torrey & Scott

_____
Warren E. Kraemer Associates, Inc.

Group B Stockholders:

BANKERS TRUST COMPANY,
as Trustee of various trust funds

By _____

MERCANTILE COMMERCE COMPANY

By_____

THE VALUE LINE SPECIAL SITUATIONS FUND, INC.

By_____

CHEMICAL BANK, as Trustee of The Chemical Bank New York Trust Company Commingled Employee Benefit Special Fund

By_____

BEECHMONT COMPANY, as Agent

By_____

THE DIEBOLD TECHNOLOGY VENTURE FUND, INC.

By_____

OHIO REAL PROPERTY, INC.

By_____

D. B. GLYNN & COMPANY

By_____

_____ [L.S.]
Raymond E. Rowland



For Exhibit I to this document see pp. 81-89 of this Appendix. It has not been reproduced here in the interest of brevity and non-duplication.

P. 128a
UK-28a (Rev. N[illegible] 966)

3

United States District Court, FILED

FOR THE Southern District of New York

MAR 3 1971

In the matter of

Airspur Corporation a/k/a
Airspur New York,

Bankrupt

(Important—Insert name of bankrupt or debtor above)

Bankruptcy
NOT DOCKET
REFEREE IN BANKRUPTCY
CLAIM No. 70-B-577

PROOF OF CLAIM IN BANKRUPTCY

William J. Phelan (Name of Person Signing Below), of ~~Xx~~Suite 2300, 7733 Forsyth~~xxxx~~ Boulevard, in Clayton (City), County of St. Louis, State of Missouri Zip Code 63105, says:

1. (a) IF CLAIMANT IS AN INDIVIDUAL, check here ____: That he is the claimant herein.
   (b) IF CLAIMANT IS A PARTNERSHIP, check here ____ and complete section (b). That he is a member of ____ (Partnership Name), a copartnership, composed of the undersigned, and ____ of ____ (City), State of ____, and carrying on business at No. ____ Street, in ____ (City) State of ____.
   (c) IF CLAIMANT IS A CORPORATION, check here X and complete section (c). That the undersigned is the President (Official Title) of K.R.Cravens Corporation (Corporate Name) (KRCC) a corporation organized under the laws of the State of Missouri, and carrying on business at No. 7733 Forsyth Blvd Street, in Clayton (City), State of Missouri, and is duly authorized to make this proof of claim on its behalf.
   (d) IF MADE BY AGENT OR ATTORNEY, check here ____ and complete section (d). That the undersigned is the agent or attorney of ____ (Creditor) of No. ____ Street, in ____ (City) State of ____; that he is duly authorized by the creditor named above to make this proof of claim in his behalf; that said proof cannot be made by the above-named creditor in person because ____
2. That the above-named bankrupt ~~xxxxxx~~ was, at the time of the filing of the petition herein, and still is, justly and truly indebted (~~xx~~ to the claimant in the sum of (continued on page 2) dollars
3. That the consideration of this debt (~~xxxxxx~~) is as follows: (continued on page 2)
4. That no part of the debt (~~xxxxxx~~) has been paid except (continued on page 2)
5. That there are no set-offs or counterclaims to the debt (~~xxxxxx~~) except (continued on page 2)
6. That claimant does not hold, and has not had or received, any security for the debt (~~xxxxxx~~), nor has any person by the claimant's order or knowledge or belief had or received any security for the debt (~~xxxxxx~~) for the claimant's use ~~xxxx~~
7. ~~[If the claim is for rent, state the name of the tenant, the premises rented, the period for which rent is claimed, the amount of rent per month, and the amount claimed.]~~
8. [If the debt is founded upon an open account.] That the said debt was ~~xxxxxxxxx~~ due on February 24, 1970~~xxxxxxxx

Proof Of Claim In Bankruptcy

In the matter of

Airspur Corporation a/k/a
Airspur New York,

Bankrupt

(In Bankruptcy
(No. 70-B-577

2. Three Hundred Seventy Thousand Seven Hundred Sixty-Eight Dollars and Eighty-Four Cents ($370,768.84).

3. A credit to the debt of International Jetstream Corporation, a Missouri corporation (IJC), to KRCC in the amount of $370,768.84, for which the open account receiveable of the above-named bankrupt in such amount, due to IJC for the consideration set forth in the attached Assignment And Acceptance Of Assignment, was assigned to KRCC.

4. (continued) as set forth in the attached Assignment And Acceptance Of Assignment, to which payments effect was given by IJC prior to such assignment, so that the debt justly and truly owing by the above-named bankrupt to KRCC is $370,768.84.

5. (continued) as set forth in the attached Assignment And Acceptance of Assignment, to which effect was given by IJC prior to such assignment, so that the debt justly and truly owing by the above-named bankrupt to KRCC is $370,768.84.

UNITED STATES DISTRICT COURT

FOR THE

Southern District of New York

In the Matter of Airspur Corporation a/k/a Airspur New York, Bankrupt	(	In Bankruptcy No. 70-B-577

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

AFFIDAVIT OF ASSIGNOR

The undersigned, William J. Phelan, of Suite 2300, 7733 Forsyth Boulevard, Clayton, County of St. Louis, State of Missouri, being duly sworn, deposes and says that he is the President of International Jetstream Corporation, a Missouri corporation ("IJC") and a wholly-owned subsidiary of K. R. Cravens Corporation, a Missouri corporation ("KRCC"), that until the Assignment by IJC and Acceptance Of Assignment by KRCC of the open account receivable owed to IJC by Airspur Corporation, a Delaware corporation ("Airspur"), Airspur was truly and justly indebted to IJC, as it is now truly and justly indebted to KRCC, in the sum of $370,768.84; that the true consideration given by IJC to Airspur for such debt was the consideration described and set forth in the Assignment And Acceptance Of Assignment attached hereto and by this reference made a part hereof; that the only payments made on the indebtedness of Airspur to IJC were the payments described and set forth in said Assignment And Acceptance Of Assignment and to which effect was given prior thereto; that the only set-offs or counterclaims to the indebtedness of Airspur to IJC were those described and set forth in said Assignment And Acceptance Of Assignment and to which effect was given prior thereto; that IJC does not hold and has not had or received any security for the indebtedness of Airspur to IJC

nor has any other person by IJC's order or knowledge or belief had or received any security for such debt for IJC's use; that the aforesaid indebtedness of Airspur to IJC, assigned to KRCC, is founded upon an open account, was due on February 24, 1970, and no note, or other negotiable instrument was received by IJC for such account or any part thereof, and no judgment has been rendered thereon; and that IJC was justly and truly indebted to KRCC in an amount in excess of the aforesaid $370,768.84 open account receivable of Airspur to IJC at the time of the assignment of such indebtedness of Airspur to KRCC by IJC in consideration of a credit in the amount of $370,768.84 against said indebtedness of IJC to KRCC.

William J. Phelan

(Seal)

Subscribed and sworn to before me this 26th day of February, 1971.

Notary Public

My commission expires: May 24, 1974.

Appointed and Commissioned for County of St. Louis, which adjoins City of St. Louis, Missouri.

Assignment And Acceptance Of Assignment

International Jetstream Corporation, a Missouri corporation ("IJC") and a wholly-owned subsidiary of K. R. Cravens Corporation a Missouri corporation ("KRCC"), does hereby transfer, assign, set over, convey and confirm unto KRCC (hereby ratifying and confirming such assignment as heretofore reflected in the books and records of IJC and KRCC) all of its right, title and interest in and to that certain open account receivable due and owing to IJC by Airspur Corporation, a Delaware corporation ("Airspur"), arising out of and resulting from the sale by IJC to Airspur on February 24, 1970 of three (3) Handley Page H.P. 137 Aircraft, Constructors Numbers 235, 238, and 240 for an aggregate purchase price of $1,395,000, which sale was confirmed and which purchase price was accepted by Airspur by the letter of Airspur to IJC dated February 25, 1970, the original of which letter is attached hereto, marked Exhibit A, and by this reference made a part hereof, said open account receivable being in the amount of $473,150 as set forth in the aforesaid letter (after the application by Airspur, as set forth in said letter, to the said aggregate purchase price of (i) the principal amounts, $300,000 and $600,850, respectively, of the two notes of IJC payable to Airspur, the originals of which notes are attached hereto, marked Exhibits B-1 and B-2, respectively, and by this reference made a part hereof, and (ii) $5,000 per plane, or a total of $15,000, of Airspur's $100,000 option deposit for twenty (20) of such aircraft, which deposit is hereinafter more fully described), which open account receivable is wholly unsecured and, though Airspur has made no payments thereon, has been reduced (i) by the amount of $17,381.16, being the amount of interest which, but for its application to the aforesaid open account receivable in accordance with the terms of the aforesaid letter would be due and owing from IJC to

Airspur, on the aforesaid two notes of IJC payable to the order of Airspur, and (ii) by the amount of $85,000, being the balance of the option deposit by Airspur with IJC, with respect to the purchase of twenty (20) Handley Page H.P. 137 aircraft, transmitted to IJC by Airspur with the letter of Airspur to IJC dated November 12, 1969, and in accordance with the agreement confirmed by the said letter, a copy of which letter is attached hereto, marked Exhibit C, and by this reference made a part hereof, which deposit, but for its application to the aforesaid open account receivable would be due and owing from IJC to Airspur, both of which amounts, $17,381.16 and $85,000, have been heretofore set-off against, and applied by IJC to reduce, the $473,150 open account receivable owed to IJC by Airspur, so that the amount of the said open account receivable assigned hereby to KRCC is $370,768.84.

To Have And To Hold the aforesaid open account receivable forever unto KRCC, its successor(s) and assign(s), and any corporation(s) into which or with which it may be liquidated, merged, or consolidated.

In consideration of the aforesaid assignment, and by accepting said assignment of the aforesaid $370,768.84 open account receivable due and owing by Airspur to IJC as of February 24, 1970, KRCC hereby agrees to, and does hereby, credit the amount of $370,768.84 to the open account receivable owed to KRCC by IJC (hereby ratifying and confirming such agreement and application as heretofore reflected in the books and records of KRCC and IJC), which receivable is in excess of said amount.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment And Acceptance Of Assignment to be executed by their respective officers hereunto duly authorized and

their corporate seals hereunto affixed as of the 26th day of February, 1970.

INTERNATIONAL JETSTREAM CORPORATION

(Corporate Seal)

By _____
William J. Phelan, President

ATTEST:

_____
Dorothy Reeb, Secretary

ACCEPTED BY:

K. R. CRAVENS CORPORATION

(Corporate Seal)

By _____
William J. Phelan, President

ATTEST:

_____
Dorothy Reeb, Secretary

AIRSPUR CORPORATION
10 ROCKEFELLER PLAZA, NEW YORK, N.Y. 10020 • (212) 765-7290

February 25, 1970

Mrs. Dorothy Reed
Treasurer
International Jetstream Corporation
Spirit of St. Louis Airport
P. O. Box 100
Chesterfield, Missouri 63017

Dear Mrs. Reed:

We acknowledge your letter of February 24 and the attached aircraft bills of sale covering the following HP-137 Jetstream aircraft:

N 10GA
N 11360
N10JA

The cost of these aircraft is accepted at $445,000 to which is added $20,000 in the form of specific optional equipment for each aircraft making the total initial purchase price at $465,000.

The additional basic stipulations with respect to the acquisition are set forth in our letter of November 12, 1969 to Mr. Phelan and with the exception of the ECGD financing are made a part hereof.

The $100,000 option deposit must be reduced by $5,000 for each of the three aircraft for a total of $15,000 which sum should also be credited to this purchase.

In accordance with the discussion with Mr. Cravens we take pleasure in attaching the two notes in the face value of $300,000 and $606,850 respectively for a total of $906,850 which is credited hereby against the purchase price of $1,395,000 exclusive of the ancillary agreed price elements and the further credit of $15,000 for the option deposit. The net effect is an amount of $473,150 will be owing to International Jetstream Corporation by Airspur Corporation and the necessary procedural aspect of this

Exhibit A

Mrs. Dorothy Reed
Chesterfield, Missouri

February 25, 1970
Page Two

obligation together with the adjustment of interest due Airspur upon the surrender of the two attached notes can be adjusted in the course of final contractual determination.

Very truly yours,

Warren E. Kraemer

Warren E. Kraemer
President

WEK/kdj

Attachments

Exhibit B-1

$ 300,000 December 4, 1969

International Jetstream Corporation after date promise to pay to the order of Airspur Corporation

Three Hundred Thousand 100 Dollars

Payable at (9½% Interest)

This note is No. ____ of a series of ____ notes; that upon the default in the payment of any one of the notes the remaining notes shall immediately become due and payable without notice.

Value received

No. 1 Due ____

International Jetstream Corp.

By Wm A Pilliam
President

Exhibit B-2

$ 606,850.00 December 18 1969

INTERNATIONAL JETSTREAM CORPORATION after date promise to pay to the order of AIRSPUR CORPORATION

Six hundred six thousand, eight hundred fifty and 00/100 100 Dollars

Payable at (9½% interest)

This note is No. ____ of a series of ____ notes; that upon the default in the payment of any one of the notes the remaining notes shall immediately become due and payable without notice.

Value received

No. ____ Due ____

INTERNATIONAL JETSTREAM CORPORATION

H K Thomas, Jr.

November 12, 1969

Mr. William Phelan
International Jetstream Corporation
Spirit of St. Louis Airport
P. O. Box 100
Chesterfield, Missouri 63017

Dear Bill:

This letter is in confirmation of our discussions during the past several days regarding a series of orders and options for Jetstream aircraft for use over scheduled routes operated by Airspur Corporation.

The conditions and terms of reference are agreed to by Airspur as follows:

1. A firm order will be signed for all aircraft which can be properly made available with the basic price of $445,000.00. We understand that these may vary in number from three aircraft to eight aircraft.

This first group will include at our cost $20,000.00 approximate valued factory optional extra equipment and will also be modified from Mark I to Mark II at a firm price of $50,000, to be additionally paid by Airspur at the time of modification.

The exchange of AZ-14 engines to AZ-16 engines is included in the basic purchase price and will be accomplished in prescribed order at no cost to Airspur.

International Jetstream will advise Airspur at its earliest opportunity of the number of aircraft and time schedule for acceptance by Airspur, based on constructor number.

Exhibit C

The execution of this firm order is subject to Airspur approval of financing terms from the Export Credit Guarantee Department of the United Kingdom Government. In general, these terms shall be: 90% of the factory price, non-mortgage notes with interest at not more than 6¼% and a term of at least five (5) years as Airspur obligations.

The training, ferrying points, spares, manuals and other integral elements will be cleared by separate agreement.

2. Further in number to the aircraft to be ordered under paragraph 1, Airspur desires options to equal a total of 20 aircraft.

If the firm order under paragraph 1 equals 8 aircraft then the option should be dated June 1, 1970 and may be converted to a firm order at any time prior thereto at a basic aircraft price not to exceed $495,000. The optional equipment will also be $20,000 at Airspur cost and the conversion kit from Mark I to Mark II will be available at $50,000, per aircraft, at Airspur cost when conversion is performed.

3. If the number to be ordered under paragraph 1 is between 3 and 5 aircraft, then the option date for 5 aircraft is advanced to March 1, 1970 with all terms as per paragraph 2 and the remaining aircraft to total 20 will have an option date of June 1, 1970.

Mr. William Phelan
Chesterfield, Missouri

November 12, 1969
Page Three

It is also agreed herewith that under separate cover you will receive an Airspur Corporation check in the amount of $100,000.00 to cover the initial twenty (20) aircraft as a contract option deposit.

All aircraft under option are subject to constructor number, availability at time each option is exercised.

Sincerely,

Warren E. Kraemer
Chairman

WEK/kdj

P. 141a

K. R. CRAVENS CORPORATION
Suite 2300
7733 Forsyth Boulevard
St. Louis, Missouri 63105

March 1, 1971

Honorable Roy Babitt
Referee In Bankruptcy
Room 237
United States Court House
Foley Square
New York, New York 10007

In the Matter of Airspur Corporation
In Bankruptcy No. 70-B-577

Dear Sir:

Enclosed for filing is the Proof of Claim of K. R. Cravens Corporation in the above-captioned matter.

You are hereby requested that all notices to which K. R. Cravens Corporation may be entitled be addressed to it in care of its counsel, Stolar, Heitzmann & Eder, 515 Olive Street, Suite 1700, St. Louis, Missouri 63101, Attention: John W. Walbran (Telephone: Area Code 314, 231-2800).

A copy of the Assignment And Acceptance Of Assignment of International Jetstream Corporation and K. R. Cravens Corporation upon which the claim of K. R. Cravens Corporation is founded is enclosed with the Proof of Claim and the original of said Assignment And Acceptance Of Assignment which is filed therewith. Upon allowance of the claim, permission to withdraw the original of the said instrument is hereby requested, and, upon the granting thereof, the return of said original Assignment And Acceptance Of Assignment in the enclosed, self-addressed, stamped envelope is respectfully requested.

Very truly yours,

K. R. CRAVENS CORPORATION

By William J. Phelan
William J. Phelan, President

4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

IN THE MATTER

OF

AIRSPUR CORPORATION
a/k/a AIRSPUR NEW YORK,

Bankrupt.

----------X

NO. 70 B 577

OBJECTION TO CLAIM

SEP 6 1972

TO: K. R. CRAVENS CORPORATION

Jerome Lipper, the trustee herein, by Alex L. Rosen, his attorney, objects to claim number 230, filed by K. R. Cravens Corporation, in the sum of $370,768.84, and cross-claims andmoves for an affirmative judgment against the said claimant on the following grounds:

1. On knowledge and information sufficient to form a belief, Kenton R. Cravens, deceased, hereinafter known as Cravens, was an officer, director, and majority owner or owner of all the issued stock of K. R. Cravens Corporation, hereinafter designated as Cravens Corp., and of International Jetstream Corporation, hereinafter designated as International, and was connected with or in control of Ohio Realty Company, hereinafter designated as Ohio.

2. Sometime prior to and during Cravens's illness in 1971, and up to thereafter, William Phelan, his son-in-law, was a director and officer of Cravens Corp. and of International.

3. At all times herein mentioned, Cravens used Cravens Corp., Ohio, together with International as the medium to implement the plan herein mentioned.

4. Cravens Corp., Cravens, Ohio, and International would have interrelated transactions where funds were transferred to and from each of the said parties to the other in discretion of Cravens.

5. Between on or about January, 1966 to about 1969 or 1970, Warren E. Kraemer, hereinafter designated Kraemer, president of Airspur, operated an agency in the United States on behalf of Handley Page, Ltd., an English corporation, hereinafter designated as original Handley, which was engaged in the business of manufacturing airplanes in England.

6. During the aforesaid period, International was the exclusive distributor for original Handley and Cravens Corp., which financed or purchased planes and had them shipped ortransferred to International.

7. In or about 1968 or 1969 or prior thereto, original Handley had embarked upon or contemplated the manufacture of a new type of custom-built plane designed for short hops and known as the Handley Page Jetstream, (Jetstream).

8. From about 1968 to 1969 and prior thereto, original Handley was having financial difficulties.

9. Kraemer and Cravens met from time to time to discuss their respective relationships to and interests in the original Handley and in the development and manufacture of Jetstream planes by the original Handley and a

successor company, in light of the financial difficulties of the original Handley.

10. Kraemer and Cravens, motivated by self-interest and personal profit, conceived and implemented a plan to maintain such interest as they had in the original Handley or its successor company by refinancing and re-vitalizing the original Handley so that it could continue the manufacturing of airplanes, particularly the Jetstream planes.

11. The plan contemplated the following:

a. Kraemer was to form a corporation which was thereafter known as Airspur.

b. The company that was to be formed by Kraemer was to acquire companies which had routes or some equipment already engaged in such business.

c. The company that was to be formed by Kraemer was to use the Jetstream as its main airplane carrier. The planes were to be purchased from International, the sole distributor for said plane in the United States.

d. Cravens was to assist in or help acquire financing from Kraemer's corporation which was to be formed as aforesaid, and in addition, he was to attempt to acquire financing in order to take over the defunct original Handley.

e. The corporation to be formed by Kraemer was to purchase a substantial number of Jetstreams from International.

12. Kraemer and Cravens then implemented their plan as aforesaid, and Kraemer formed Airspur.

13. On August 7, 1969, a receiver was appointed by the English Court for the, by then, totally bankrupt original Handley.

14. On August 15, 1969 and on October 17, 1969, a company formed and/or controlled by Cravens, contracted with the receiver of the original Handley to purchase the original Handley and continue operations as Handley Page Aircraft, Ltd., (Handley II).

15. The negotiations between Airspur and the proposals thereto were that Airspur was to acquire twenty (20) Jetstream aircraft and obtain an option on ten (10) additional aircraft.

16. The negotiations contemplated that the first five or eight Jetstreams contracted for would cost $445,000.00 each, plus $20,000.00 for factory installed optional equipment, that the price of nine through twenty of said planes was to be $520,000.00 each; with a 10% down payment for each plane purchased, and the remainder to be paid over five to seven years at 6-1/4% interest, based on the United Kingdom Government (E.C.G.D.) financing or other financing which would minimize the cash investment of Airspur and which cash was required in developing the future operations of Airspur's business.

17. The negotiations were that the purchase agreement, if any, was contingent upon a number of factors,

including replacement with more powerful engines, modification of certain parts of the plane which were defective, the availability of financing as hereinbefore mentioned, and the approval of the Federal Aviation Administration that the Jetstream could be flown for public transportation.

18. Negotiations continued between Cravens, Kraemer, International and Airspur, but remained in a state of flux and never culminated into an agreement between Airspur and International.

19. In December of 1969, by arrangement between Kraemer and Cravens, Airspur gave $100,000.00 to International, allegedly as some form of token, subject to an agreement being actually entered into, if any, between International and Airspur for the alleged purchase of twenty (20) Jetstream aircraft, pursuant to specific conditions submitted by Airspur as hereinbefore mentioned.

20. Cravens and his associates could not raise the necessary financing or were short the money to finance the contemplated Handley II reorganization and its operations.

21. At the same time, International was in financial difficulties or insolvent.

22. Cravens needed money for International or Handley II, or to meet past due bills.

23. Cravens and Kraemer then conceived a plan whereby Airspur would lend to International a sum of $906,850.00.

24. Airspur did lend to International the sum of $906,850.00 and received therefor notes of International for said sum.

25. Said notes had no guarantors, but were merely notes executed by International.

26. The said notes were not secured in any manner.

27. On or about January or February of 1970, the financial conditions of International, or its affiliated companies, deteriorated, and the attempts to rehabilitate and refinance the original Handley were failing, whereupon a plan was conceived by Cravens and Kraemer to eliminate the debt owed by International to Airspur in the sum of $906,850.00, represented by International's notes, and the $100,000.00 token deposit hereinbefore mentioned.

28. To implement said plan, it was arranged by the parties hereinbefore mentioned and others that International do the following:

a. Purportedly arrange for a sale of four (4) Jetstream aircraft to Airspur,

b. Make it appear that Airspur had possession of four (4) Jetstream aircraft,

c. Make it appear that Airspur had a security interest in the said four (4) Jetstream planes, and

d. Arrange that the notes for the sum of $906,850.00 be returned by Airspur to International for alleged payment of four (4) Jetstream planes under the guise of the plan hereinbefore mentioned.

29. The foregoing plan was implemented, and the notes for $906,850.00 were marked "paid February 24, 1970", and were returned by Airspur to International on the basis that Airspur had title, possession and security interest in four (4) Jetstream planes.

30. Thereafter and on or about February 27, 1970, three (3) Jetstream aircraft were flown to Northwest Industries, Ltd., located in Edmunton, Alberta, Canada, a subcontractor of Cravens Corp. or International, or their interrelated or affiliated company.

31. The facts were that on February 24, 1970, when the notes were returned as aforesaid, Airspur neither had title, possession nor a security interest in any four (4) or even three (3) Jetstream planes.

32. Attempts were made thereafter to purportedly transfer three (3) Jetstream planes to Airspur, which planes did not have the necessary modifications or changes of engines, which could not be used for public air transportation and which had not been financed as negotiated for as hereinbefore mentioned.

33. In 1970, Cravens and Phelan, Cravens Corp., or International, canabalized the the three (3) Jetstream planes that they purportedly claimed to have sold to Airspur under the fraudulent plan hereinbefore mentioned.

34. When the $1,068,500.00 was fraudulently taken or converted from Airspur by International, a substantial amount of said funds was turned over to Cravens

Corp. or Ohio or was utilized for their benefit.

35. Cravens, Cravens Corp., International and Ohio participated in the fraud committed and/or in the diversion of Airspur's funds as hereinbefore mentioned.

36. As a result of the fraud committed and the diversion of Airspur's moneys as hereinbefore mentioned by Cravens, Cravens Corp., Ohio and International, Airspur was damaged in the sum of $1,068,500.00.

WHEREFORE, Jerome Lipper, trustee in Bankruptcy of Airspur Corporation, applies to this Court to disallow and expunge the claim number 230 of Cravens Corporation and that the cross-claim of Airspur be granted against Cravens Corp. for the sum of $1,068,500.00, and the said trustee be granted a judgment, together with such other and further relief as to this Court may seem just and proper in the premises.

Dated: New York, New York
day of August, 1972

Jerome Lipper, Trustee
by Alex L. Rosen, his attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF

AIRSPUR CORPORATION a/k/a
AIRSPUR NEW YORK

Bankrupt.

No. 70-B-577

FILED
MAR 15 1971
ROY BABITT
REFEREE IN BANKRUPTCY

PROOF OF CLAIM IN BANKRUPTCY
~~CLAIM NO.~~

STATE OF MISSOURI
SS
CITY OF ST. LOUIS

Harrison F. Coerver of 721 Locust Street, in the City of St. Louis, State of Missouri, being duly sworn deposes and says:

1. That he is President of Mercantile Commerce Company, a Missouri corporation, and carrying on business at No. 721 Locust Street, in the City of St. Louis, State of Missouri, and is duly authorized to make this proof of claim on its behalf.

2. That the above-named bankrupt was at and before the filing by it of the petition herein for adjudication of bankruptcy, and still is, justly and truly indebted to said Mercantile Commerce Company in the principal sum of Three Hundred Seventy-five Thousand Dollars ($375,000.00) together with interest on said amount at the rate of Eight Per Cent (8%) per annum from July 24, 1969 until August 31, 1970, the date of adjudication.

3. That the consideration of said debt is as follows: Money loaned to bankrupt by this claimant.

4. That no part of said debt has been paid.

5. That there are no set-offs or counterclaims to said debt.

6. That this claimant does not hold, and has not, nor has any person by its order, or to its knowledge or belief, for its use, had or received, any security or securities for said debt.

7. That the instrument upon which said debt is founded is attached hereto.

8. That no judgment has been rendered thereon.

9. This claim is filed as an unsecured claim.

Harrison F. Coerver

Subscribed and sworn to before me this 11th day of March, 1971.

My commission expires November 24, 1972.

(seal)

Notary Public
Notary for the County of St. Louis
which adjoins the City of St. Louis

P. 151a

No. 2 $375,000.00

AIRSPUR CORPORATION

New York, New York

FIVE YEAR, EIGHT PER CENT NOTE

DUE July 24, 1974

AIRSPUR CORPORATION, a corporation organized and existing under the laws of the State of Delaware (herein called the "Corporation") for value received hereby promises to pay to

MERCANTILE COMMERCE COMPANY or his registered assigns five years from date hereof (unless before that date this note shall have been called for redemption and provision made for the payment of the redemption price hereof) the principal sum of THREE HUNDRED SEVENTY-FIVE THOUS. DOLLARS ($ 375,000.) with interest thereon from the date of issue at the rate of eight per cent (8%) per annum payable at the office of the Corporation, New York, New York in quarterly installments on the first day of January, the first day of April, the first day of July and the first day of October following the date hereof.

This note is one of an authorized issue of five year eight per cent notes of the Corporation limited to the aggregate principal amount of Three Million Seven Hundred and Fifty Thousand Dollars ($3,750,000), all of like tenor except as to denomination.

All of the notes of this issue rank equally and ratably without priority of any of said notes over any others by reason of date or priority in time of the issue or negotiation thereof or otherwise.

This note is not transferable by endorsement or otherwise than by surrender hereof for cancellation and the issue of a new note of like tenor in the name of the transferee and the registration of the transfer upon the books kept by the Corporation for that purpose at its principal office in the City and State of New York; the Company hereby agreeing at any time and from time to time to make transfers of this note as directed by the above named payee and to issue new notes of similar tenor in the aggregate principal amount of the then unpaid principal hereon.

This note is redeemable at any time prior to maturity by the Corporation at its option as a whole or from time to time in part upon at least thirty (30) days notice at the principal amount thereof plus accrued interest to the date fixed for redemption. Such notice to be by mail and to be addressed to the holder thereof at the address as indicated in the books of the Corporation. If this note shall be called for redemption and payment of the redemption price shall be duly provided by the Corporation, interest shall cease to accrue hereon from and after the date for redemption fixed in the notice thereof.

The Corporation will not pay any dividends upon any share of stock of the Corporation, unless all interest due on or prior to the date of the payment of any dividend on the notes of this issue shall have been or be paid in full.

This note is the corporate obligation of the Corporation only and no recourse shall be had for the payment of the principal of this note or the interest hereon, against any present, past or future stockholder, officer or director of the Corporation, either directly or indirectly through the Corporation by virtue of any statute or the enforcement of any assessment or otherwise; all such liability of said stockholders, directors and officers, as such, being released by the registered owner hereof by the acceptance of this note and as part of the consideration of the issue hereof.

The sale or transfer of this Note is subject to the provisions of the Federal Securities Act of 1933, as amended, and to the terms of a Purchase Agreement dated as of July 24, 1969 among Airspur Corporation and certain Purchasers identified therein.

IN WITNESS WHEREOF, AIRSPUR CORPORATION, New York, New York, has caused its corporate seal to be affixed hereto, attested by its secretary or assistant secretary and these presents to be signed in its name by its president or ~~chairman~~ chairman all as of the 24th day of July, 1969.

AIRSPUR CORPORATION

By: [signature]
~~President~~ Chairman

Attest:

[signature]
Secretary

2

AIRSPUR

Corporation



8% Note

$.375,000.00

Principal Due

July 24, 1974

INTEREST PAYABLE

January 1st — April 1st

July 1st — October 1st

FOR VALUE RECEIVED, I/We hereby sell, assigned and transfer unto.....

Note represented by the within certificate and do hereby irrevocably constitute and appoint

.....Attorney

to transfer the said Note on the Books of the within named Corporation with full power of substitution in the premises.

Dated.....19.....

In presence of:

.....

.....

— P. 152a —

attach to ck #7355

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of	)	
	)	In Bankruptcy
AIRSPUR CORPORATION,	)	No. 70 B 577
a/k/a AIRSPUR NEW YORK,	)	
	)	
Bankrupt.	)	

FILED
OCT 30 1972
ROY BABITT
FREE IN BANKRUPT

POWER OF ATTORNEY

TO: Sidney I. Liebowitz,
Lewis R. Cowan,
Martin J. Bluestein and
Cowan Liebowitz & Latman
Attorneys-at-Law
200 East 42nd Street
New York, New York, 10017

Mercantile-Commerce Company, a Missouri corporation, does hereby authorize you, or any one of you, with full power of substitution, to attend all meetings of creditors of the bankrupt aforesaid, and all adjournments thereof, at the places and times appointed by the Court, and forsaid corporation and in its name to vote for or against any proposal or resolution that may be then submitted under the Act of Congress relating to bankruptcy, to vote for a trustee or trustees of the estate of the said bankrupt and for a committee of creditors, to accept any arrangement proposed by said bankrupt in satisfaction of its debts, and to receive payment of dividends, and payment or delivery of money or of other consideration due said corporation under such arrangement, and for any other purpose in its interest whatsoever; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting, or sittings of the Court, which may be held therein for any of the purposes aforesaid.

IN WITNESS WHEREOF, said corporation has caused this Power of Attorney to be executed by its President and the seal

of the corporation affixed hereto by its Secretary this 24th day of October, 1972.

MERCANTILE-COMMERCE COMPANY

[SEAL]

By _____
President

ATTEST:

_____
Secretary

STATE OF MISSOURI,)
) SS:
CITY OF ST. LOUIS,)

Sworn to before me this 24th day of October, 1972, said subscriber being known to me to be the person described in and who signed and swore to the foregoing Power of Attorney and duly acknowledged that he executed and was authorized to execute the same on behalf of Mercantile-Commerce Company.

_____
Notary Public
ELLIOTT W. ALEXANDER
Notary for the County of St. Louis
which adjoins the City of St. Louis

My Commission Expires: November 24, 1972

6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SEP 6 1972
ROY BABITT
CLERK IN BANKR.

IN THE MATTER OF

AIRSPUR CORPORATION, a/k/a AIRSPUR NEW YORK,

Bankrupt.

No. 70 B 577

OBJECTION TO CLAIM, AND OFFSETS, CROSS-CLAIM AND REQUEST FOR AFFIRMATIVE JUDGMENT

JEROME LIPPER, the trustee herein, objects to claim number 238 filed by Mercantile Commerce Co in the sum of $375,000.00 and cross claims and moves for affirmative judgment against the said claimant on the following grounds:

1. Claimant was a stockholder of the bankrupt, with its agent or representative on the Board of Directors, was privy to the operations and transactions of the bankrupt from or about the date of incorporation and shared equally in the management and control of the bankrupt.

2. On July 24, 1969, 12,500 original issue shares of common stock of the bankrupt were issued to Mercantile Commerce Co. for the sum of $125,000.00.

3. On July 24, 1969, Mercantile Commerce Co. entered into an agreement collectively with Airspur Corporation (Airspur), the bankrupt, and the stockholders of Airspur, namely: Bankers Trust Company, The Value Line Special Situation Fund, Inc., Chemical Bank, as Trustee of the Chemical Bank

6

LAW OFFICES
COWAN, LIEBOWITZ & LATMAN
200 EAST 42ND STREET
NEW YORK, N. Y. 10017

MARVIN S. COWAN
SIDNEY I. LIEBOWITZ
ALAN LATMAN
LEWIS R. COWAN
ARTHUR J. GREENBAUM
ROBERT HALPER
MICHAEL F. MASCHIO
MARTIN J. BLUESTEIN

AREA CODE 212
YUKON 6-6272
CABLE ADDRESS:
COWLIELAT, N. Y.

October 24, 1972

Hon. Roy Babitt,
Referee in Bankruptcy
United States District Court
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

Re: Matter of AIRSPUR CORPORATION, Bankrupt
No. 70 B 577

Dear Referee Babitt:

Enclosed please find a Power of Attorney duly executed by our client, Mercantile Commerce Company, a claimant of the above-mentioned bankrupt.

Would you please forward any notices that may be issued by the Court in this matter to this law firm.

Thank you for your consideration.

Sincerely,

COWAN, LIEBOWITZ & LATMAN

BY: Martin J. Bluestein
Martin J. Bluestein

MJB/cr
Enclosure

New York Trust Company Commingled Employee Benefit Special Fund, Beechmont Company, as Agent, Diebold Technology Venture Fund, Inc., Ohio Real Property, Inc., D.B. Glynn & Company, designated as Group B stockholders, and B.V. Brooks, Brooks, Torrey & Scott, and Warren E. Kraemer Associates, Inc. designated as Group A stockholders. (Exhibit A)

4. Under the terms of said agreement, which was entered into for the best interests of and for the benefit of Airspur and the parties therein stated, Group B stockholders covenanted to impose certain controls over Airspur, among which was the power to approve or ratify any contract or act submitted for approval by the Board of Directors of Airspur to the shareholders of the company, and claimant Mercantile Commerce Co. was kept informed of the negotiations, received memoranda pertaining thereto, and received drafts of proposed agreements relating to the transactions herein mentioned for its consideration and/or approval.

4(a). The claimant was neglectful and failed to perform its obligations and breached said agreement with Airspur in the manner and as to the transactions as hereinafter mentioned.

5. Richard Mersinger (Mersinger) was designated by the claimant as its agent and representative to act on the Board of Directors of the bankrupt.

6. Mersinger was elected to the Board of Directors of the bankrupt on July, 24, 1969.

7. As a director and officer of the bankrupt, Mersinger owed a duty to the bankrupt to use that degree of diligence, care and skill which an ordinary, prudent

man would exercise under similar circumstances in like positions.

8. As a director and officer of the bankrupt, Mersinger had a duty to know what was transpiring in the business affairs of the corporation, and, in the assumption of his fiduciary position, he had a duty to act in good faith andnot to close his eyes to what was going on around him.

9. As a director and officer Mersinger was responsible for acts of omission and neglect of his duties.

10. As will hereinafter be shown, Mersinger breached his duties as an officer and director of the bankrupt, whichresulted in financial disaster and the bankruptcy of Airspur.

11. At all times hereinafter mentioned, the claimant, Mercantile Comm.had or is chargeable with knowledge of the negligent acts and or omissions of its agent or representative, Mersinger, as a member of the board of directors of Airspur.

12 Mersinger acted or omitted to act or was negligent as a director of Airspur as a result of which Airspur was damaged as hereinafter mentioned.

13. Between on or about January 1966 to about 1969 or 1970, Warren E. Kraemer (Kraemer), president of Airspur, operated an agency in the United States on behalf of Handley Page, Ltd., an English corporation, as (original Handley) which was engaged in the business of manufacturing airplanes in England.

14. Kenton R. Cravens, deceased, (Cravens) was a stockholder and officer as well as director of K. R. Cravens Inc,. (Cravens Inc.) and of International Jetstream Corp. (International).

15. During the aforesaid period, International was the exclusive distributor for original Handley and Cravens Inc., which financed or purchased planes and had them shipped or transferred to International.

16. In or about 1968 or 1969 or prior thereto, original Handley had embarked upon or contemplated the manufacture of a new type of custom-built plane designed for short hops and known as the Handley Page Jetstream, (Jetstream).

17. From about 1968 to 1969 and prior thereto, original Handley was having financial difficulties.

18. Kraemer and Cravens met from time to time to discuss their respective relationship to and interests in the original Handley and in the development and manufacture of Jetstream planes by the original Handley and a successor company, in light of the financial difficulties of the original Handley.

19. Kraemer and Cravens, motivated by self-interest and personal profit, conceived and implemented a plan to maintain such interest as they had in the original Handley or its successor company by refinancing

and revitalizing the original Handley so that it could continue the manufacturing of airplanes, particularly the Jetstream planes.

20. The plan contemplated the following:

a. Kraemer was to form a corporation which was thereafter known as Airspur.

b. The company that was to be formed by Kraemer was to acquire companies which had routes or some equipment already engaged in such business.

c. The company that was to be formed by Kraemer was to use the Jetstream as its main airplane carrier. The planes were to be purchased from International, the sole distributor for said plane in the United States.

d. Cravens was to assist in or help acquire financing from Kraemer's corporation which was to be formed as aforesaid, and in addition, he was to attempt to acquire financing in order to take over the defunct original Handley.

e. The corporation to be formed by Kraemer was to purchase a substantial number of Jetstreams from International.

21. Kraemer and Cravens then implemented their plan as aforesaid, and Kraemer formed Airspur.

22. The plan, or parts thereof, were disclosed by Kraemer to all the directors of Airspur in or about 1969.

23. Investments in Airspur were solicited from third parties by said Kraemer, Cravens and Mersinger at about

The same time Cravens was negotiating with the receiver of Handley Page to purchase, revitalize and refinance the operations of Handley Page and, particularly, its production of the Jetstream.

24. In July 1969, Mercantile Com advanced to Airspur an approximate total of $500,000.00

25. On August 7, 1969, a receiver was appointed by the English Court for the, by then, totally bankrupt original Handley.

26. On August 15, 1969 and on October 17, 1969, a company formed and/or controlled by Cravens, contracted with the receiver of the original Handley to purchase the original Handley and continue operations as Handley Page Aircraft, Ltd., (Handley II).

27. At about the time Airspur had been formed, Mersinger was elected a director of Airspur, pursuant to an arrangement or an agreement as hereinbefore mentioned, to protect the respective investments and/or loans made by Mercanile Comm. as hereinbefore mentioned, and he continued as director until about August 31, 1970, when Airspur was adjudicated a bankrupt.

28. Claimant had knowledge or is chargeable with knowledge that Kraemer, an officer of Airspur, was engaged in negotiations with Cravens of international for the alleged purchase of certain Jetstream aircraft, manufactured or to be manufactured by Handley II.

29. The negotiations between Airspur and the proposals thereto were that Airspur was to acquire (20) twenty Jetstream aircraft and obtain an option on ten (10) additional aircraft.

30. The negotiations contemplated that the first five or eight Jetstreams contracted for would cost $445,000.00 each, plus $20,000.00 for factory installed optional equipment, that the price of nine through twenty of said planes was to be $520,000.00 each; with a 10% down payment for each plane purchased, and the remainder to be paid over five to seven years at 6-1/4% interest, based on the United Kingdom Government (E.C.G.D.) financing or other financing which would minimize the cash investment of Airspur and which cash was required in developing the future operations of Airspur's business.

31. The negotiations were that the purchase agreement, if any, was contingent upon a number of factors, including the replacement with more powerful engines, modification of certain parts of the plane which were defective, the availability of financing as hereinbefore mentioned, and the approval of the Federal Aviation Administration that the Jetstream could be flown for public transportation.

32. Negotiations continued between Cravens, Kraemer, International and Airspur, but remained in a state of flux and never culminated into an agreement between

Airspur and International.

33. In December of 1969, by arrangement between Kraemer and Cravens, Airspur gave $100,000.00 to International, allegedly as some form of token, subject to an agreement being actually entered into, if any, between International and Airspur for the alleged purchase of twenty (20) Jetstream aircraft, pursuant to specific conditions submitted by Airspur as hereinbefore mentioned.

34. Cravens and his associates could not raise the necessary financing or were short the money to finance the contemplated Handley II reorganization and its operations.

35. At the same time, International was in financial difficulties or insolvent.

36. Cravens needed money for International or Handley II, or to meet past due bills.

37. Cravens and Kraemer then conceived a plan whereby Airspur would lend to International a sum of $906,850.00.

38. Airspur did lend to International the sum of $906,850.00 and received therefor notes of International for said sum.

39. Said notes had no guarantors, but were merely notes executed by International.

40. The said notes were not secured in any manner.

41. On or about January or February of 1970, the financial conditions of International, or its affiliated companies, deteriorated, and the attempts to rehabilitate and refinance the original Handley were failing, whereupon a plan was conceived by Cravens and Kraemer to eliminate the debt owed by International to Airspur in the sum of $906,850.00, represented by International's notes, and the $100,000.00 token deposit hereinbefore mentioned.

42. To implement said plan, it was arranged by the parties hereinbefore mentioned and others that International do the following:

a. Purportedly arrange for a sale of four (4) Jetstream aircraft to Airspur,

b. Make it appear that Airspur had possession of four (4) Jetstream aircraft,

c. Make it appear that Airspur had a security interest in the said four (4) Jetstream planes, and

d. Arrange that the notes for the sum of $906,850.00 be returned by Airspur to International for alleged payment of four (4) Jetstream planes under the guise of the plan hereinbefore mentioned.

42A. The foregoing plan was implemented, and the notes for $906,850.00 were marked "paid February 24, 1970" and were returned by Airspur to International on the basis that Airspur had title, possession and security interest in four (4) Jetstream planes.

43. Thereafter and on or about February 27, 1970, three (3) Jetstream aircraft were flown to Northwest Industries Ltd., located in Edmunton, Alberta, Canada, a subcontractor of Cravens Inc. or International, or their interrelated or affiliated company.

44. The facts were that on February 24, 1970, when the notes were returned as aforesaid, Airspur neither had title, possession nor a security interest in any four (4) or even three (3) Jetstream planes.

45. Attempts were made thereafter to purportedly transfer three (3) Jetstream planes to Airspur, which planes did not have the necessary modifications or changes of engines, which could not be used for public air transportation and which had not been financed as negotiated for as hereinbefore mentioned.

46. At the January 6, 1970 meeting of the Board of Directors, at which Mersinger was present, it was reported that continuing efforts were being made to finance the Jetstream fleet. At the February 13, 1970 meeting, at which Mersinger was present, further reports were made of the difficulties involved with the financing of the Jetstream aircraft. It was also reported that four Jetstream aircraft were at that time in Canada.

47. In reality, there were no Jetstream aircraft in Canada, and by the February meeting, it was obvious that

no financing would be forthcoming from the British Government. Yet, on February 24, 1970, with the acquiescence of Mersinger the International Jetstream notes were marked "Paid February 24, 1970" and were returned by Airspur to International Jetstream on the pretense that Airspur had title, possession and a security interest in four Jetstream planes.

48 Mersinger, having been forewarned by previous errors in projections submitted to him and by other loose acts and statements of officers and directors of Airspur, and having knowledge of the aforementioned, had a duty to act as a prudent man managing his own property. He had, therefore, a duty to investigate and prevent the virtual gift of approximately $1,000,000.00 to International Jetstream.

49. Mersinger did not request to see or inquire as to whether a written memorandum or contract had been signed by International or Airspur as to the transactions relating to the purchase of Jetstream aircraft, or as to whether the negotiations had resulted in compliance with the necessary implementation of the proposals as set forth in paragraphs 30 and 31 supra.

50. Prior to the token $100,000.00 being given by Airspur to International and the said loan of $906,850.00 having been made and thereafter, both prior to

and when the notes were returned to International as hereinbefore mentioned Mersinger did not request a financial statement, credit report or information as to the financial responsibility of International, failed to make any investigation thereof, and had no knowledge of the financial responsibility of International.

51. Mersinger continued to neglect his duty to the bankrupt, and acquiesced in matters which led to further waste of corporate assets, to wit: In or about May, 1970, Kraemer and Mersinger along with the other directors, conceived a plan to form a corporation to be known as American Jetstream, Inc., (American Jetstream), which was to purchase the then remaining fixed assets of Handley II, even though it was common knowledge that Cravens had failed disastrously in his attempt to reorganize the original Handley company, that it was impossible to get financing from the British Government, that the Jetstream aircraft were defective, that a Jetstream aircraft had crashed over St. Moritz, Switzerland on March 6, 1970, killing at least thirteen persons, and that the Federal Aviation Administration had banned the commercial use of Jetstream aircraft in the United States.

52. Despite the above, Mersinger agreed to the purchase of the assets of Handley II, and in furtherance of the plan, American Jetstream was incorporated on or

about May 11, 1970 under the laws of the State of Delaware, with 1,000 shares of authorized common stock of the par value of 10¢ a share. A certificate to do business in New York State was filed on June 9, 1970 by American Jetstream. American Jetstream actually only issued 100 shares, with a par value of $10.00, and all of these shares were issued to Airspur.

53. On June 2, 1970, an agreement was drawn between American Jetstream and Richard N.D. Langdon, the Court-appointed receiver of Handley II, whereby American Jetstream was to pay a deposit of approximately $72,000.00 for an option to buy the remaining assets of Handley II. The deposit would be forfeited if the option was not exercised. Said agreement is attached hereto, and marked Exhibit 1.

54. Directly, or through its wholly owned subsidiary, Airspur Financial Corp., Airspur paid said sum of approximately $72,000.00, which was the required deposit for acquiring the option hereinbefore mentioned. In addition, Airspur, or through its aforementioned subsidiary, paid various sums amounting to approximately $20,000.00 to Beaumont & Sons, the attorneys who were handling the trancaction in question for American Jetstream in London.

55. No other capitol investment and no other

moneys of any kind were paid or invested by any other party.

56. Neither Airspur nor Airspur Financial Corp. received anything in return for the approximately $92,000.00 paid, as hereinbefore mentioned, except the 100 shares of American Jetstream stock, each of which share had a par value of 10¢, for a total of $10.00.

57. American Jetstream had no other assets of any kind, except the questionable option to acquire the remaining Handley II assets.

58. During the time that Airspur was paying the moneys hereinbefore mentioned, Airspur was short of operating capital, was in serious financial difficulties, and was not paying its bills as they became due.

59. The option hereinbefore mentioned had to be abandoned, and all of the $92,000.00 advanced and paid by Airspur, or Airspur Financial Corp., was lost.

60. Prior to the time assets of Airspur, and/or its subsidiary were wasted in the American Jetstream operation, Mersinger knew that millions of dollars had previously been lost in an attmept to reorganize original Handley. He knew of the errors of judgment, misrepresentations and failures in projections, financial and otherwise involved in the above venture, yet he failed to further prevent the dissipation of the assets of the bankrupt;

failed to acquire further knowledge of relevant facts so as to prevent additional waste, which amounts to wanton and reckless disregard for the consequences of his conduct as will hereinafter be shown.

61. During and around the same time that Airspur was allegedly negotiating with International, to wit: on or about September or October, 1969, the Board of Directors of Airspur, including Mersinger conferred regarding the purchase of a Caribbean area airline passenger operation known as Tradewinds Airlines, Inc. (Tradewinds), and the purchase of 100% of the common stock of Tradewinds Investment Co., an affiliate of Tradewinds. These companies were to be purchased from Berwind Corporation of Philadelphia (Berwind), the parent corporation. Tradewinds was to be renamed Airspur Caribbean, Inc.

62. Mersinger had knowledge that the capital investments and loans initially made in Airspur totalled about $4,770,000.00, and that Airspur was then in its formative stages and required a good credit rating and an image to the general public that it was financially sound and responsible so as to induce other carriers and the general public to do business with it and use its passenger services.

63. The purchase price to be paid by Airspur for the acquisition as aforementioned from Berwind was a total sum of $3,550,000.00; $1,150,000.00 in cash and $2,400,000.00 in installments.

64. During the negotiations and discussions, taking into consideration the limited capital and cash that Airspur had as against the amount necessary for expansion and to have credit extended to it, no security interest or liens were to be given to Berwind for the balance of the purchase price which was to be paid in installments.

65. Thereafter, on October 22, 1969, Airspur entered into an agreement which was closed on October 30, 1969 whereby it purchased from Berwind the common stock of Tradewinds Investment Company, which a cash payment of $1,150,000.00 and installment payments of a balance of $2,400,000.00, represented by notes.

66 Mersinger was kept informed of the negotiations, received various memoranda pertaining thereto, and received drafts of the proposed agreement between Airspur and Berwind.

67. The transaction involving Berwind was the most important acquisition undertaken by Airspur, representing an aggregate cash payment and deferred obligation, of which $1,150,000.00 cash was an immediate payment.

68 Mersinger had knowledge that the total investment in and loans made initially to Airspur was the sum of about $4,770,000.00.

69. The transaction with Berwind, involving

$3,550,000.00, was of major importance to Airspur, and claimant, by its stockholder's agreement was obligated to make a thorough investigation of the operations of the business Airspur was acquiring. It was claimant's duty to determine the probabilities of Airspur Caribbean being a successful operation, to examine the provisions of the contract relating thereto, and to recognize the effect the signing of said contract would have on the future of Airspur.

70. Despite the significance of the Berwind transaction, the claimant or its representative did not investigate the matter with the reasonsble care a businessman of ordinary prudence would have exercised in the management of his own affairs.

71. Reasonable investigation by the claimant or its representative into the operation of Tradewinds would have established that same was unsuccessful, and that the transaction was doomed to fail.

72. Claimant's representative failed and omitted to perform his duties as officer and director of Airspur, and therefore claimant, under the aforementioned agreement among stockholders, was negligent in failing to prevent the disaster which resulted from the Berwind transaction.

73. The consequences of the Berwind transaction directly resulted in the bankruptcy

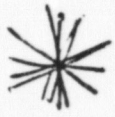
of Airspur, resulting in damages to Airspur of approximately $5,000,000.00.

PLEASE TAKE FURTHER NOTICE that no date has been set for a hearing on the objection within. A hearing is subject to the Honorable Roy Babitt, Referee in Bankruptcy, setting a date on his calendar for a date certain, written notice of which will be forwarded to you or your authorized attorney.

WHEREFORE, Jerome Lipper, said trustee, prays that said claim of Mercantile Commerce co be disallowed, and that he recover from said claimant the amount of $6,208,904.00.

Dated: New York, New York
17th day of August, 1972

Jerome Lipper, Trustee



For Exhibits to this document see pp. 74-89 of this Appendix. It has not been reproduced here in the interest of brevity and non-duplication.

P. 174a

9

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - x

IN THE MATTER

OF

AIRSPUR CORPORATION, a/k/a AIRSPUR NEW YORK,

Bankrupt.

- - - - - - - - - - - - - - - - - x

NOV 2 (1972

No. 70 B 577

NOTICE OF MOTION AND MOTION TO DISMISS COUNTER-CLAIM

PLEASE TAKE NOTICE, that the undersigned will move the Hon. Roy Babitt, Referee in Bankruptcy, at the United States Courthouse, Foley Square, New York City on December 5, 1972 at 1:30 P.M., or as soon thereafter as counsel can be heard, for an order pursuant to Rule 12(b)(1) and Rule 12(b)(2) of the Federal Rules of Civil Procedure dismissing the "Objections to Claim and Offsets, Cross-claims and Request for Affirmative Judgment" (hereinafter denominated "counterclaim") filed by Jerome Lipper, Trustee in Bankruptcy, against Bankers Trust Company, claimant herein, on the grounds that:

1. The Bankruptcy Court lacks jurisdiction of the subject matter of said counterclaims;

2. The Bankruptcy Court lacks jurisdiction of the person of Bankers Trust Company;

and for such other and further relief as the Court may deem just and proper, together with the costs and disbursements of

9

this motion.

Dated: New York, New York
November 17, 1972

WHITE & CASE

By _____
A Member of the Firm
Attorneys for Claimant
Bankers Trust Company, as Trustee
14 Wall Street
New York, New York 10005

TO:

ALEX L. ROSEN, ESQ.
Attorney for Trustee
225 Broadway
New York, New York

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

IN THE MATTER : 70 B 577

OF : AFFIDAVIT

AIRSPUR CORPORATION, a/k/a AIRSPUR NEW YORK, :

Bankrupt. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

A.A.T. Wickersham, being duly sworn, deposes and says:

I am a Vice President of Bankers Trust Company, claimant herein. I make this affidavit in support of Bankers Trust's motion to dismiss the "Objection to Claim and Offsets, Cross-claims and Request for Affirmative Judgment" filed herein by the Trustee, Jerome Lipper on or about the 30th day of August, 1972.

The aforesaid pleading (hereafter referred to as "counterclaim") seeks disallowance of the claim filed herein by Bankers Trust Company and, in addition, seeks affirmative recovery and judgment against Bankers Trust in the amount of $6,208,004.00. The gravamen of the counterclaim apparently is that Bankers Trust Company purchased stock of Airspur, was a party to an agreement among the stockholders of Airspur, that it designated one Andrews as its agent to act on the Board of Directors of Airspur, that Andrews breached his duties as officer and director of Airspur, and that Bankers Trust either knew or is chargeable with knowledge of the

negligent acts and/or omissions of Andrews. It is claimed that Andrews' (and others') negligence resulted in the damage to Airspur in the amount of $6,208,904.00.

The pertinent underlying facts and documentation have been previously submitted to this Court. Bankers Trust Company, as trustee for certain trust funds, on July 24, 1969 purchased 62,500 shares of Airspur common stock for the trusts. On behalf of the same pension funds, Bankers Trust loaned Airspur $1,875,000 through purchase of Airspur 8% notes. A copy of the purchase agreement is annexed hereto as Exhibit A. On the same day, also in its capacity as trustee of various trust funds, Bankers Trust entered into an Agreement with Airspur and the other stockholders of Airspur which required consent of the majority of the Group B stockholders before certain affirmative major actions, such as sale of the bulk of Airspur's assets, could be taken by the corporation. As a holder of the Group B common stock of Airspur and pursuant to the Agreement, Bankers Trust agreed to the designation of certain persons as members of the Board of Directors of Airspur. Annexed hereto as Exhibit B is a copy of the aforesaid agreement among stockholders.

Bankers Trust Company had no individual or corporate interest in the above-described investments or agreement. The stock and loan investements, and entry into the agreement among stockholders, were all entered into by Bankers Trust in its capacity as trustee on behalf of trusts it was administering.

Upon Airspur's filing under Chapter XI of the Bankruptcy Act, and following the adjudication of Airspur as a bankrupt, Bankers Trust as trustee of the trusts it was administering filed a proof of claim before this Court in the amount of $1,875,000. No objection was made to this claim until the filing of the "Objections" on or about August 30, 1972.

While the document filed on or about August 30, 1972 purports to be, inter alia, objections to the claim of Bankers Trust Company, no reference whatsoever is made in that document to the transaction upon which the claim of Bankers Trust Company is based, that is, the loan to Airspur through the purchase of notes in the sum of $1,875,000 on behalf of the trusts. Instead, the "Objections" refer to the purchase of stock, the agreement among stockholders, the designation of persons to the Board of Airspur and the subsequent business dealings of Airspur which it is alleged resulted in the losses leading to bankruptcy.

It is thus obvious that the so-called objections, offsets, cross-claims and request for affirmative judgment have no relation to the claim filed by Bankers Trust as trustee, that is, for money loaned to Airspur upon its formation. Moreover, as the exhibits annexed hereto establish, these transactions were entered into by Bankers Trust as trustee for certain trust funds. The claim of Bankers Trust was similarly filed as trustee for these trust funds seeking to recover for the beneficiaries of those funds the amounts invested on their behalf. I am informed that if there is any claim against Bankers Trust, it must be against Bankers Trust in its individual capacity and not as a trustee.

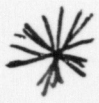
Bankers Trust has not filed any claim or otherwise appeared in this proceeding in its individual capacity.

For the foregoing reasons and those set forth in the accompanying memorandum of law, it is respectfully requested that the Objection To Claim and Offsets, Cross-claims and Request for Affirmative Judgment filed by Jerome Lipper, the Trustee herein, be dismissed.

Sworn to before me this
12th day of October, 1972.

Notary Public

CLAIRE HANSEN
Notary Public, State of New York
No. 24-6762210
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1974



For Exhibits A and B to this document see pp. 5-41 and pp. 49-55 of this Appendix. It has not been reproduced here in the interest of brevity and non-duplication.

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NOV 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF	:	No. 70 B 577
AIRSPUR CORPORATION, a/k/a AIRSPUR NEW YORK,	:	NOTICE OF MOTION TO DISMISS OBJECTIONS TO CLAIM AND OFFSETS, CROSS-CLAIMS AND REQUEST FOR AFFIRMATIVE JUDGMENT
Bankrupt.	:	

PLEASE TAKE NOTICE, that upon the annexed affidavit of Lewis R. Cowan, Esq. sworn to the 28th day of November, 1972, and all other proceedings heretofore had herein, the undersigned will move the Honorable Roy Babitt, Referee in Bankruptcy, at the United States Courthouse, Foley Square, New York, New York on the 5th day of December, 1972, at 1:30 P. M., or as soon thereafter as counsel can be heard, for an order pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure dismissing the "Objection to Claim and Offsets, Cross-Claim and Request for Affirmative Judgment" (herein referred to as "Objection, etc.") filed by Jerome Lipper, the Trustee in Bankruptcy against Mercantile Commerce Company, a claimant herein, on the ground that the Bankruptcy Court does not have jurisdiction of the subject matter of the said "Objection, etc." and further allowing the claim of Mercantile Commerce Company as filed, and for such

other and further relief as the court may determine to be just and proper together with the costs of this motion.

Dated: New York, New York
November 28, 1972

Yours, etc.

COWAN, LIEBOWITZ & LATMAN

By: Lewis R. Cowan

Lewis R. Cowan, Partner
Attorneys for Claimant
Mercantile Commerce Company
200 East 42nd Street
New York, New York 10017

To: Alex L. Rosen, Esq.
Attorney for Jerome Lipper,
Trustee in Bankruptcy
225 Broadway
New York, New York 10007

P182a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF AIRSPUR CORPORATION, a/k/a AIRSPUR NEW YORK, Bankrupt.	No. 70 B 577 AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LEWIS R. COWAN, being duly sworn, deposes and says:

1. I am an attorney-at-law and a member of the firm of COWAN, LIEBOWITZ & LATMAN, attorneys for MERCANTILE COMMERCE COMPANY (hereinafter called "COMMERCE"), a Missouri corporation. I make this Affidavit in support of the motion being made by COMMERCE to dismiss the "Objection to Claim and Offsets, Cross-Claim and Request for Affirmative Judgment" (hereinafter called "Objection, etc.") filed by the Trustee in bankruptcy on or about August 17, 1972.

2. On or about the 15th day of March, 1971, COMMERCE filed a claim against the bankrupt in the sum of $375,000 plus interest which claim is based on a note of the bankrupt corporation in the principal amount of $375,000 purchased by COMMERCE on July 24, 1969. A copy of that claim is annexed hereto as Exhibit "I".

3. In or about August, 1972, the Trustee in bankruptcy served upon COMMERCE its "Objection, etc.". The "Objection, etc." not only seeks to have the Bankruptcy Court disallow COMMERCE's claim, but also seeks to obtain an affirmative judgment against COMMERCE for damages in excess of $6,000,000. A copy of said "Objection, etc." is annexed hereto as Exhibit "II".

4. Virtually the exact same "Objection, etc." was filed against other holders of the AIRSPUR CORPORATION notes, who have similarly filed claims for the principal amount of these notes plus interest. These claimants include Chemical Bank, Bankers Trust Company and Ohio Real Property, Inc.. Chemical Bank and Bankers Trust have both moved to dismiss the Trustee's "Objection, etc." and by the instant motion, COMMERCE joins in praying for such relief.

5. In August of 1972, an action was commenced in the New York State Supreme Court, New York County by the Trustee against COMMERCE, by service of a summons and complaint in St. Louis, Missouri. Annexed hereto as Exhibit "III" is a copy of said summons and complaint. Of the seventeen defendants named in the New York State action, most have not filed claims in the Bankruptcy Court. In the New York State action, the Trustee is seeking damages against the defendants in the total amount of $6,208,904 which is exactly the same amount of

damages which the Trustee seeks in his "Objection, etc." to obtain by summary jurisdiction against each of certain claimants individually, in the Bankruptcy Court. It is clear from reading both the complaint in the New York State action and the form of "Objection, etc." filed against COMMERCE, Chemical Bank and Bankers Trust in the Bankruptcy Court, that the Trustee alleges the exact same set of facts in both documents, and that the claims being asserted in the "Objection, etc." correspond to the alleged three causes of action in the State Court complaint.

6. I further wish to point out to this Court that nowhere in the "Objection, etc." does the Trustee bring into question the validity of COMMERCE's filed claim based on the note. Since the entire "Objection, etc." should be dismissed by the Bankruptcy Court on the grounds which are set forth in the accompanying memorandum of law, being submitted by COMMERCE, and the similar arguments propounded by Chemical Bank and Bankers Trust Company, the filed claim of COMMERCE must be allowed without any offset or reduction in amount.

Lewis R. Cowan
LEWIS R. COWAN

Sworn to before me this
28th day of November, 1972

Notary Public

RONA MOSKOWITZ
Notary Public, State of New York
No. 41-7035223
Qualified in Queens County
Cert. filed in New York County
Commission Expires March 30, 1974

IN THE UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF AIRSTUR CORPORATION a/k/a AIRSTUR NEW YORK Bankrupt.	No. 70-B-577

PROOF OF CLAIM IN BANKRUPTCY

STATE OF MISSOURI CITY OF ST. LOUIS	SS

Harrison F. Coerver of 721 Locust Street, in the City of St. Louis, State of Missouri, being duly sworn deposes and says:

1. That he is President of Mercantile Commerce Company, a Missouri corporation, and carrying on business at No. 721 Locust Street, in the City of St. Louis, State of Missouri, and is duly authorized to make this proof of claim on its behalf.

2. That the above-named bankrupt was at and before the filing by him of the petition herein for adjudication of bankruptcy, and still is, justly and truly indebted to said Mercantile Commerce Company in the principal sum of Three Hundred Seventy-five Thousand Dollars ($375,000.00) together with interest on said amount at the rate of Eight Per Cent (8%) per annum from July 24, 1969 until August 31, 1970, the date of adjudication.

3. That the consideration of said debt is as follows: Money loaned to bankrupt by this claimant.

4. That no part of said debt has been paid.

5. That there are no set-offs or counterclaims to said debt.

6. That this claimant does not hold, and has not, nor has any person by its order, or to its knowledge or belief, for its use, had or received, any security or securities for said debt.

EX.

Ex 1

7. That the instrument upon which said debt is founded is attached hereto.

8. That no judgment has been rendered thereon.

9. This claim is filed as an unsecured claim.

Harrison F. Coerver

Subscribed and sworn to before me this ____ day of March, 1971.
My commission expires _____.

(seal)

Notary Public

No. 2 $375,000.00

AIRSPUR CORPORATION

New York New York

FIVE YEAR, EIGHT PER CENT NOTE

DUE July 24, 1974

AIRSPUR CORPORATION, a corporation organized and existing under the laws of the State of Delaware (herein called the "Corporation") for value received hereby promises to pay to

MERCANTILE COMMERCE COMPANY or his registered assigns five years from date hereof (unless before that date this note shall have been called for redemption and provision made for the payment of the redemption price hereof) the principal sum of THREE HUNDRED SEVENTY-FIVE THOUS. DOLLARS ($ 375,000.) with interest thereon from the date of issue at the rate of eight per cent (8%) per annum payable at the office of the Corporation, New York, New York in quarterly installments on the first day of January, the first day of April, the first day of July and the first day of October following the date hereof.

This note is one of an authorized issue of five year eight per cent notes of the Corporation limited to the aggregate principal amount of Three Million Seven Hundred and Fifty Thousand Dollars ($3,750,000), all of like tenor except as to denomination.

All of the notes of this issue rank equally and ratably without priority of any of said notes over any others by reason of date or priority in time of the issue or negotiation thereof or otherwise.

This note is not transferable by endorsement or otherwise than by surrender hereof for cancellation and the issue of a new note of like tenor in the name of the transferee and the registration of the transfer upon the books kept by the Corporation for that purpose at its principal office in the City and State of New York; the Company hereby agreeing at any time and from time to time to make transfers of this note as directed by the above named payee and to issue new notes of similar tenor in the aggregate principal amount of the then unpaid principal hereon.

This note is redeemable at any time prior to maturity by the Corporation at its option as a whole or from time to time in part upon at least thirty (30) days notice at the principal amount thereof plus accrued interest to the date fixed for redemption. Such notice to be by mail and to be addressed to the holder thereof at the address as indicated in the books of the Corporation. If this note shall be called for redemption and payment of the redemption price shall be duly provided by the Corporation, interest shall cease to accrue hereon from and after the date for redemption fixed in the notice thereof.

The Corporation will not pay any dividends upon any share of stock of the Corporation, unless all interest due on or prior to the date of the payment of any dividend on the notes of this issue shall have been or be paid in full.

This note is the corporate obligation of the Corporation only and no recourse shall be had for the payment of the principal of this note or the interest hereon, against any present, past or future stockholder, officer or director of the Corporation, either directly or indirectly through the Corporation by virtue of any statute or the enforcement of any assessment or otherwise; all such liability of said stockholders, directors and officers, as such, being released by the registered owner hereof by the acceptance of this note and as part of the consideration of the issue hereof.

The sale or transfer of this Note is subject to the provisions of the Federal Securities Act of 1933, as amended, and to the terms of a Purchase Agreement dated as of July 24, 1969 among Airspur Corporation and certain Purchasers identified therein.

IN WITNESS WHEREOF, AIRSPUR CORPORATION, New York, New York, has caused its corporate seal to be affixed hereto, attested by its secretary or assistant secretary and these presents to be signed in its name by its president or ~~chairman~~ all as of the 24th day of July 1969.

AIRSPUR CORPORATION

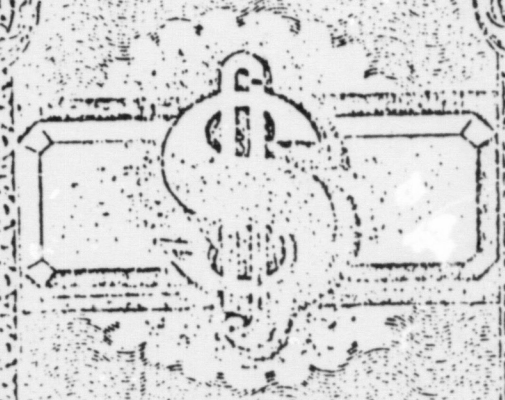
By: _____
~~President~~ Chairman

Attest:

_____
Secretary

AIRSPUR

Corporation



8% Note

$ 375,000.00

Principal Due

July 24, 1974

INTEREST PAYABLE

January 1st — April 1st

July 1st — October 1st

FOR VALUE RECEIVED, the undersigned do hereby sell, assign and transfer unto

Attorney

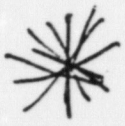
Note represented by the within certificate and do hereby irrevocably constitute and appoint

to transfer the said note on the books of the within named Corporation with full power of substitution in the premises.

Dated 19

In presence of:

P. 187a



For Exhibit 2 to this document see pp. 156a-173a and pp. 74a-89a of this Appendix. It has not been reproduced here in the interest of brevity and non-duplication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

JEROME LIPPER, Trustee in Bankruptcy for AIRSPUR CORPORATION, a/k/a AIRSPUR, NEW YORK, Bankrupt,

Plaintiff,

-against-

LEONARD B. ANDRENS, JOSEPH BENNING, JR., EDWARD W. BREED, B. V. BROOKS, JR., WARREN E. KRAEMER, RICHARD MERSINGER, GROVER MOORE, WILLIAM PHELAN, JERRY W. RYAN, VERNON TAYLOR, WILLIAM PHELAN as Executor of KENTON R. CRAVENS, DECEASED, BANKERS TRUST COMPANY, CHEMICAL BANK NEW YORK TRUST COMPANY, MERCHANTILE TRUST COMPANY NATIONAL ASSOCIATION, MERCANTILE COMMERCE COMPANY, and OHIO REAL PROPERTY, INC.,

Defendants.

----------X

SUMMONS

Plaintiff designates NEW YORK as the county for trial.

Plaintiff resides at 261 Madison Avenue, New York, New York.

To the above named Defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney within twenty days after the service of this summons, exclusive of the day of service: and in case of your failure to appear, or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated: August 15, 1972

ALEX L. ROSEN, ESQ.
Attorney for Plaintiff
Office and Post Office Address
225 Broadway
New York, New York 10007
(212) 227-1787

Notice: The object of this action is TO RECOVER DAMAGES AGAINST OFFICERS AND DIRECTORS OF THE CORPORATION FOR MIS-MANAGEMENT, NEGLIGENCE, FOR FAILURE TO PERFORM THEIR DUTIES AS DIRECTORS, FOR FRAUD AND COLLUSION, AND FOR VIOLATION OF GENERAL CORPORATION LAW §60 AND BUSINESS CORPORATION LAW §720 NEW YORK STATE AND AGAINST OTHER DEFENDANTS FOR FRAUD, BREACH OF CONTRACT, ETC.

The relief sought includes DAMAGES of $6,208,904.00

EX

Ex 3

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

JEROME LIPPER, Trustee in Bankruptcy for AIRSPUR CORPORATION, a/k/a AIRSPUR NEW YORK, Bankrupt,

Plaintiff,

-against-

LEONARD B. ANDREWS, JOSEPH BENNING, JR., EDWARD W. BREED, B.V. BROOKS, JR., WARREN E. KRAEMER, RICHARD MERSINGER, GROVER MOORE, JERRY W. RYAN, VERNON TAYLOR, WILLIAM PHELAN, Executor of KENTON R. CRAVENS, Deceased, BANKERS TRUST COMPANY, CHEMICAL BANK NEW YORK TRUST COMPANY, MERCANTILE TRUST COMPANY, NATIONAL ASSOCIATION, MERCANTILE COMMERCE COMPANY, WILLIAM PHELAN, and OHIO REAL PROPERTY, INC.,

Defendants.

COMPLAINT AGAINST OFFICERS OF THE CORPORATION FOR MISMANAGEMENT, NEGLIGENCE, FOR FAILURE TO PERFORM THEIR DUTIES AS DIRECTORS, FOR FRAUD AND COLLUSION, AND FOR VIOLATION OF GENERAL CORPORATION LAW §60 AND BUSINESS CORPORATION LAW §720 NEW YORK STATE AND AGAINST OTHER DEFENDANTS FOR FRAUD, BREACH OF CONTRACT, ETC.

----------X

JEROME LIPPER, as Trustee of Airspur Corporation, hereinafter designated as "Airspur", complaining of defendants by Alex L. Rosen, his attorney, alleges as follows:

FOR A FIRST CAUSE OF ACTION

1. Upon information and belief, at all times hereinafter mentioned, Airspur was a corporation duly organized on November 18, 1968, under the laws of the State of Delaware, with its principal place of business at 10 Rockefeller Plaza, New York, New York.

2. On July 15, 1969, Airspur filed a certificate of doing business under the laws of New York State

3. Upon information and belief, Airspur was formed, among other purposes, to engage in the business of conducting a commercial airline servicing the public by means of short hops between airports in the same, or in different cities.

4. Upon information and belief, directors' meetings of Airspur were held, and its principal books and records were kept, at its main office at 10 Rockefeller Plaza, New York, New York.

5. On June 30, 1970, Airspur filed a petition in the United States District Court for the Southern District of New York, which commenced proceedings under Chapter XI of the Bankruptcy Act. These proceedings were aborted, and Airspur was adjudicated a bankrupt on August 31, 1970. Thereafter, the said United States District Court assumed exclusive jurisdiction over Airspur and of all its property and assets wherever located and now has such jurisdiction.

6. Plaintiff herein was duly appointed Trustee in bankruptcy of Airspur on August 31, 1970, and has since been acting as such.

7. Upon information and belief, at all times herein mentioned, defendants Leonard B. Andrews, hereinafter referred to as "Andrews", Joseph Benning, Jr., hereinafter referred to as "Benning", Edward W. Breed, hereinafter referred to as "Breed", B.V. Brooks, Jr., hereinafter referred to as "Brooks", Warren E. Kraemer, hereinafter referred to as

"Kraemer", Richard Mersinger, hereinafter referred to as "Mersinger", Grover Moore, hereinafter referred to as "Moore", Jerry W. Ryan, hereinafter referred to as "Ryan", and Vernon Taylor, hereinafter referred to as "Taylor", were officers and directors of Airspur.

8. Upon information and belief, at all times herein mentioned, the defendants Bankers Trust Company, a New York bank, hereinafter referred to as "Bankers Trust", Chemical Bank New York Trust Company, hereinafter referred to as "Chemical", Mercantile Trust Company, National Association, a St. Louis, Missouri bank, hereinafter referred to as "Mercantile Bank", Mercantile Commerce Company of St. Louis, Missouri, a wholly owned subsidiary of Mercantile Bank, hereinafter referred to as "Mercantile Commerce", Ohio Real Property, Inc., hereinafter referred to as "Ohio", were, from on or about the incorporation of Airspur, privy to the operations and transactions of Airspur.

9. Upon information and belief, Kenton R. Cravens, deceased, hereinafter referred to as "Cravens", was at all times herein mentioned, a stockholder and officer as well as director of K. R. Cravens Inc., hereinafter referred to as "Cravens Inc." and of International Jetstream Corp., hereinafter referred to as "International", and of Ohio Real

Property Inc., hereinafter referred to as "Ohio".

10. Upon information and belief, defendant William Phelan, hereinafter referred to as "Phelan", son-in-law of Cravens , is the executor of the estate of Cravens, deceased.

11. Upon information and belief and at all times herein mentioned, the defendant Phelan was a director and officer of both Cravens, Inc. and International.

12. Upon information and belief, between on or about January 1956 to about 1969 or 1970, defendant Kraemer operated an agency in the United States on behalf of Handley Page, Ltd., an English corporation, hereinafter referred to as "original Handley", which was engaged in the business of manufacturing airplanes in England.

13. Upon information and belief, during the aforesaid period International was the exclusive distributor for original Handley and Cravens Inc., which financed or purchased planes and had them shipped or transferred to International.

14. Upon information and belief, in or about 1968 or 1969 or prior thereto, original Handley had embarked upon or contemplated the manufacture of a new type of custom-built plane designed for short hops and known as the Handley Page Jetstream, hereinafter referred to as "Jetstream".

15. Upon information and belief, from about 1968 and 1969 and prior thereto, original Handley was having financial difficulties.

16. Upon information and belief, defendants Kraemer and Cravens met from time to time to discuss their respective relationship to and interests in the original Handley and in the development and manufacture of Jetstream planes by the original Handley and a successor company, in light of the financial difficulties of the original Handley.

17. Upon information and belief, Kraemer, Phelan and Cravens, motivated by self-interest and personal profit, conceived and implemented a plan to maintain such interest as they had in the original Handley or its successor company by refinancing and revitalizing the original Handley so that it could continue the manufacturing of airplanes, particularly the Jetstream planes.

18. The plan contemplated the following:

a. Kraemer was to form a corporation which was thereafter known as Airspur,

b. The company that was to be formed by Kraemer was to acquire companies which had routes or some equipment already engaged in such business,

c. The company that was to be formed by Kraemer was to use the Jetstream as its main airplane carrier. The planes were to be purchased from International, the sole distributor for said plane in the United States.

d. Cravens was to assist in or help acquire financing for Kraemer's corporation which was to be formed as aforesaid, and in addition, he was to attempt to acquire financing in order to take over the defunct original Handley,

e. The corporation to be formed by Kraemer was to purchase a substantial number of Jetstreams from Inter-

national.

19. Cravens had been for many years an officer and a chairman of the board of directors of the defendant Mercantile Bank, and at all the times herein mentioned was closely connected with the Mercantile Bank and with Mercantile Commerce, a subdivision or interrelated with the Mercantile Bank.

20. Kraemer, Cravens and Phelan then implemented their plan as aforesaid, and Kraemer formed Airspur.

21. The plan, or parts thereof, were disclosed by Kraemer to all the defendants in or about 1969.

22. Investments in Airspur were solicited from third parties by said defendants Kraemer, Cravens, Brooks and Andrews at about the same time Cravens was negotiating with the receiver of Handley Page to purchase, revitalize and refinance the operations of Handley Page and, particularly its production of the Jetstream.

23. During the time from about 1969, when solicitation of investment capital was being negotiated from Chemical, Mercantile Bank, Mercantile Commerce, Bankers Trust, and Ohio, and when said parties made investments in Airspur, Chemical, Mercantile Bank, Mercantile Commerce, Bankers Trust and Ohio requested designees to represent them and to act on their behalf as directors and manage the affairs of Airspur, as hereinafter mentioned:

a. The defendant Benning, Vice President of Chemical, was to act as the representative and agent of Chemical on the Board of Directors of Airspur.

b. The defendant Mersinger, Executive Vice President of Mercantile Bank, was to act as the representative and agent of Mercantile Bank, Mercantile Commerce, Ohio, and the defendant Cravens,

c. The defendant Andrews was to act as the representative and agent of the defendant Bankers Trust.

24. Upon information and belief, on or about the time the defendants Bankers Trust, Chemical, Mercantile Bank, Mercantile Commerce, Brooks, Kraemer, Andrews, Benning and Mersinger made their investments or loans to Airspur or become associated with Airspur, an agreement was entered into between the said defendants and Airspur, dated July 24, 1969, a copy of which is hereto attached and marked Exhibit A, which purportedly was for their and the best interests of Airspur, and which provided, among other things, for certain controls over Airspur and power for said defendants to approve or ratify any contract or act submitted for approval on behalf of Airspur.

25. Upon information and belief, the said defendants were constantly apprised, advised and did receive drafts of proposed agreements and memoranda and notice of final agreements and memoranda relating to the transactions herein mentioned for their consideration and/or approval.

26. In April of 1969, Mercantile Bank was designated the official depository of Airspur. In July of 1969, Airspur acquired financing as hereinafter stated. By this time, all of the defendants had been named officers and directors of the corporation.

27. Upon information and belief, in July of 1969, Bankers Trust advanced to Airspur an approximate total

of $2,500,000.00, some of which was from trust funds administered by it.

28. Upon information and belief, Chemical advanced to Airspur an approximate total of $500,000.00, some of which was in trust funds administered by it.

29. Upon information and belief, Mercantile Commerce advanced to Airspur or its parent company, Mercantile Bank, approximately $500,000.00.

30. On August 7, 1969, a receiver was appointed by the English Court for the, by then, totally bankrupt original Handley.

31. On information and belief, on August 15, 1969 and on October 17, 1969, a company formed and/or controlled by Cravens, contracted with the receiver of the original Handley to purchase the original Handley and continue operations. Copies of said contracts between the receiver of the original Handley and the company formed and/or controlled by Cravens are hereto attached and marked Exhibit B.

32. The original Handley became Handley Page Aircraft Limited, hereinafter referred to as "Handley II".

33. On knowledge and information sufficient to form a belief, in 1969, Cravens solicited and borrowed or acquired substantial moneys partially secured, or unsecured, from the defendant Mercantile Bank or from Mercantile Commerce, one of its subsidiaries or subdivisions, to invest in Airspur as well as in his Handley II venture.

34. At about the time Airspur had been formed, defendants Benning, Mersinger and Andrews were elected as directors of Airspur, pursuant to an arrangement or an agreement as hereinbefore mentioned, to protect the respective

investments and/or loans made by Bankers Trust, Chemical, Mercantile Bank and Mercantile Commerce as hereinbefore mentioned, and they continued as directors until about August 30, 1970, when Airspur was adjudicated a bankrupt.

35. On information and belief, at all times herein mentioned, Kraemer, Ryan, Benning, Mersinger, Moore, Brooks, Taylor, Breed and Andrews were elected as directors of Airspur, and the officers elected were:

a. Kraemer, as Chairman of the Board and/or President,

b. Ryan, as Secretary,

c. Moore, as Vice President,

d. Brooks, as President or Vice President at various times,

36. Upon information and belief, on or about July 24, 1969, Cravens and defendants Bankers Trust, Mercantile Bank, Mercantile Commerce, Chemical Bank and associated companies and customers, and Ohio held a majority of the shares of Airspur through substantial investments of money in the stock of Airspur.

37. On knowledge and information sufficient to form a belief, at all times herein mentioned, the defendants had knowledge or are chargeable with knowledge that Kraemer, an office of Airspur, was engaged in negotiations with Cravens and/or Phelan of International for the alleged purchase of certain Jetstream aircraft, manufactured or to be manufactured by Handley II.

38. The negotiations between Airspur and the proposals thereto were that Airspur was to acquire (20)

twenty Jetstream aircraft and obtain an option on ten (10) additional aircraft.

39. Upon information and belief, the negotiations contemplated that the first five or eight Jetstreams contracted for would cost $445,000.00 each, plus $20,000.00 for factory installed optional equipment, that the price of nine through twenty of said planes was to be $520,000.00 each; with a 10% down payment for each plane purchased, and the remainder to be paid over five to seven years at 6-1/4% interest, based on the United Kingdom Government (E.C.G.D.) financing or other financing which would minimize the cash investment of Airspur and which cash was required in developing the future operations of Airspur's business.

40. The negotiations were that the purchase agreement, if any, was contingent upon a number of factors including the replacement of more powerful engines, modification of certain parts of the plane which were defective, the availability of financing as hereinbefore mentioned, and the approval of the Federal Aviation Administration that the Jetstream could be flown for public transportation.

41. On information and belief, negotiations continued between Cravens, Phelan, Kraemer, International and Airspur, but remained in a state of flux and never culminated into an agreement between Airspur and International.

42. On information and belief, in December of

1969, by arrangement between Kraemer, Cravens and Phelan, Airspur gave $100,000.00 to International, allegedly as some form of token, subject to an agreement being actually entered into, if any, between International and Airspur for the alleged purchase of twenty (20) Jetstream aircraft, pursuant to specific conditions submitted by Airspur as hereinbefore mentioned.

43. On information and belief, Cravens and his associates could not raise the necessary financing or were short the money to finance the contemplated Handley II reorganization and its operations.

44. On information and belief, at the same time, International was in financial difficulties or insolvent.

45. On information and belief, Cravens and/or Phelan needed money for International or Handley II , or to meet past due bills due from them to Mercantile Bank or other creditors of theirs.

46. On information and belief, Cravens and Kraemer and Phelan then conceived a plan whereby Airspur would lend to International a sum of $906,850.00.

47. On information and belief, Airspur did lend to International the sum of $906,850.00 and received therefor notes of International for said sum.

48. Said notes had no guarantors, but were merely notes executed by International.

49. The said notes were not secured in any manner.

50. On information and belief, about the time Airspur gave the sum of $906,850.00 to International as hereinbefore mentioned, the said moneys, or a substantial part thereof, were first transferred to the Mercantile Bank or to the defendant Mercantile Commerce. Mersinger, their agent or designee on Airspur's Board of Directors, had knowledge of these transactions.

51. On information and belief, on or about January or February of 1970, the financial conditions of International, or its affiliated companies, deteriorated, and the attempts to rehabilitate and refinance the original Handley were failing, whereupon a plan was conceived by Cravens, Kraemer, Phelan and other defendants to eliminate the debt owed by International to Airspur in the sum of $906,850.00, represented by International's notes, and the $100,000.00 token deposit hereinbefore mentioned.

52. On information and belief, to implement said plan, it was arranged by the parties hereinbefore mentioned and others that International do the following:

a. Purportedly arrange for a sale of four (4) Jetstream aircraft to Airspur,

b. Make it appear that Airspur had possession of four (4) Jetstream aircraft,

c. Make it appear that Airspur had a security interest in the said four (4) Jetstream planes, and

d. Arrange that the notes for the sum of $906,850.00 be returned by Airspur to International for alleged payment of four (4) Jetstream planes under the guise of the plan hereinbefore mentioned.

53. The foregoing plan was implemented, and the notes for $906,850.00 were marked "paid February 24, 1970" and were returned by Airspur to International on the basis that Airspur had title, possession and security interest in four (4) Jetstream planes.

54. On information and belief, thereafter and on or about February 27, 1970, three (3) Jetstream aircraft were flown to Northwest Industries Ltd., located in Edmunton, Alberta, Canada, a subcontractor of Cravens Inc. or International, or their interrelated or affiliated company.

55. On information and belief, the facts were that on February 24, 1970, when the notes were returned as aforesaid, Airspur neither had title, possession nor a security interest in any four (4) or even three (3) Jetstream planes.

56. On information and belief, attempts were made thereafter to purportedly transfer three (3) Jetstream planes to Airspur, which planes did not have the necessary modification or changes of engines, which could not be used for public air transportation, and which had not been financed as negotiated for as hereinbefore mentioned.

57. On information and belief, at about the time the said notes were returned and after the aforementioned plan was implemented, all the defendants herein mentioned had knowledge or should have had knowledge as to the aforementioned transaction or facts.

58. On information and belief, although all of the defendants knew that no agreement had been reached and signed by Airspur with International for the purchase of

Jetstreams as hereinbefore mentioned, none of the defendants requested to see or inquired as to whether a written memorandum or contract had been signed by International or Airspur as to the transactions relating to the purchase of the Jetstream aircraft.

59. On information and belief, both prior to the token $100,000.00 given by Airspur to International and the said loan of $906,850.00 having been made, and thereafter, when the notes were returned to International as hereinbefore mentioned, none of the defendants requested a financial statement, credit report or information as to the financial responsibility of International, failed to make any investigation whatsoever thereto, and had no knowledge of the financial responsibility of International.

60. On information and belief, at no time was a contract or written memorandum signed by Airspur and/or by Airspur and International as to the purchase or sale of the Jetstreams as hereinbefore mentioned.

61. At no time was any outside financing acquired for Airspur for the purchase of any Jetstream planes as contemplated in the negotiations.

62. At no time were the engines changed as contemplated in the negotiations.

63. At no time were any defects inherent in the planes eliminated.

64. On information and belief, in or about March of 1970, the defendants had knowledge or should have

had knowledge that International was financially irresponsible and/or that the attempt by Cravens to revitalize the original Handley venture was failing or had failed and in order to cover up the transaction relating to the $1,006,850.00 given by Airspur to International as hereinbefore mentioned, an attempt was made to create a facade that Airspur had title of record to three (3) Jetstream planes that allegedly had been delivered to Northwest Industries in Edmundon, Alberta, Canada.

65. Jerome Lipper, Trustee of Airspur, has refused to claim title or ownership or possession of said three (3) planes, taking into consideration the fraudulent plan conceived and implemented as hereinbefore mentioned.

66. On information and belief, at all times herein mentioned, International and/or Phelan asserted possession, control and ownership of said three (3) Jetstream planes held by Northwest Industries, and removed parts thereof and cannibalized said planes.

67. On information and belief, the defendants had knowledge or were chargeable with knowledge that none of the conditions negotiated for had been complied with by International as hereinbefore mentioned, nor that an agreement thereto as aforementioned had been agreed to or had been signed by Airspur and International.

68. The negotiations between Airspur and International were aborted inasmuch as the company, Handley II,

which Cravens formed and backed financially and which had taken over the assets of the original Handley, could not get sufficient financial capital to continue operations.

69. Furthermore, a Jetstream plane carrying public passengers crashed, killing at least eleven persons on or about March 6, 1970 in Europe, over St. Moritz, Switzerland, as a result of which there were serious doubts as to whether said Jetstream could ever be used for public air transportation without radical changes being made in the engines in addition to other modifications.

70. On information and belief, after Airspur had been operating for a period of time there were actions by Kraemer and others, such as vague unsupported general statements involving material aspects of the business, and dealings by and as conducted by Airspur as well as failure of financial projections to materialize as well as the magnitude of the International and Berwind transactions as herein stated, which should have forewarned the defendant directors and officers and the Mercantile Bank, Mercantile Commerce, Bankers Trust and Chemical to make further investigations as to statements made and as to the herein mentioned Airspur's transactio

71. As hereinbefore mentioned:

a. The defendants did not exercise such reasonable care as a businessman of ordinary prudence generally exercises in the management of his own affairs,

b. The defendants failed and omitted to

perform their duties as directors.

c. The defendants were negligent, as directors and/or officers.

d. As herein set forth, defendants failed to perform their obligations to Airspur as provided in Exhibit A and agreed to by them.

e. The contemplated transactions with International involved a sum and possible liability in excess of ten million ($10,000,000.00) dollars and the transaction with Berwind Inc., hereinafter mentioned, involved about three million, five hundred thousand ($3,500,000.00) dollars, and the defendants failed and omitted to properly check or investigate same and were otherwise negligent as directors and/or officers and/or parties to the Agreement, Exhibit A hereto.

72. Upon information and belief and at all the times herein mentioned, the defendants Bankers Trust, Chemical, Mercantile Bank, Mercantile Commerce and Ohio directly and indirectly through representatives and agents on the Board of Directors, controlled the Board of Directors of Airspur, had or should have had knowledge of the actions taken or omitted to be taken by the officers and directors of Airspur as herein alleged, which actions they ratified or impliedly ratified.

73. That as a result of the foregoing breach of contract, omissions or commissions, and acts of the defendants as to the transaction relating to International, Airspur was damaged in the sum of $1,116,914.00.

FOR A SECOND CAUSE OF ACTION

74. Plaintiff repeats and realleges as part of

this cause of action as if specifically set forth herein the allegations of paragraphs "1" through "72" of the complaint herein.

75. Upon information and belief, at all the times herein mentioned, the defendants had knowledge that millions of dollars had already been lost in the Handley II venture as hereinbefore mentioned.

76. Upon information and belief, defendants Kraemer, Brooks, Ryan and Andrews, in or about May of 1970, conceived a plan to form a corporation to be known as American Jetstream Inc., hereinafter referred to as "American Jetstream", which was to purchase the then remaining fixed assets of Handley II.

77. Upon information and belief, the above-mentioned plan was conceived after Cravens had defaulted in his efforts to comply with the agreement dated August 15, 1969 between Cravens and the receiver of the original Handley, Kenneth R. Cork, and which contemplated that American Jetstream acquire an option to purchase the entire Jetstream program, including work in progress, tools, jigs and hardware, that Airspur have only a minority interest in American Jetstream, that some of the directors and officers of Airspur have control of American Jetstream, and that an attempt be made to acquire outside financing in order to exercise the option.

78. Upon information and belief, in furtherance of this plan, American Jetstream was incorporated on or about May 11, 1970, under the laws of the State of Delaware with 1,000 shares of authorized common stock of the par

value of ten cents (10¢) a share. A certificate to do business in New York State was filed on June 9, 1970 by American Jetstream.

79. Upon information and belief, Kraemer, Andrews and Brooks were directors and officers of American Jetstream.

80. Upon information and belief, American Jetstream issued only 100 shares for $10.00 (ten dollars), all of which were issued to Airspur.

81. On June 2, 1970, an agreement was drawn between American Jetstream and Richard N.D. Langdon, the Court-appointed receiver of Handley II, whereby American Jetstream was to pay a deposit of approximately $72,000.00 for an option which would be forfeited if the option was not exercised by American Jetstream. Said agreement is marked Exhibit C and is hereto attached.

82. Upon information and belief, directly or through its wholly owned subsidiary, Airspur Financial Corp. paid said sum of approximately $72,000.00, the required deposit for acquiring the option hereinbefore mentioned. Airspur, or through its aforementioned subsidiary, paid at various times the sum of approximately $20,000.00 to Beaumont & Sons, the attorneys who were handling the transaction in question for American Jetstream in London.

83. Upon information and belief, no other capital investment and no other moneys of any kind or nature were paid or invested by any of the defendants or any of the

parties in the matter relating to American Jetstream and for the option agreement entered into, and the moneys paid by Airspur Financial were moneys belonging to Airspur.

84. Upon information and belief, Airspur, or its wholly owned subsidiary, Airspur Financial, received nothing in return for the approximately $92,000.00 it paid, as hereinbefore mentioned, except a credit of $500.00 and 100 shares of American Jetstream stock, which had only a par value of ten cents (10¢) per share.

85. Upon information and belief, American Jetstream had no other assets of any kind except the questionable option to acquire the remaining Handley II assets.

86. Upon information and belief, during the time that Airspur paid the moneys hereinbefore mentioned, Airspur was short of operating capital, was in serious financial difficulties, and was not paying its bills as they became due.

87. Upon information and belief, the option hereinbefore mentioned had to be abandoned and all of the $92,000.00 advanced by Airspur, or Airspur Financial, its wholly owned subsidiary, were lost.

88. Upon information and belief, prior to the American Jetstream transaction, all of the defendants knew that millions of dollars had previously been lost in an attempt to reorganize the original Handley operation, that an attempt to do so was fraught with danger, difficulties and practical inability to acquire both the personnel as well as the amount of financing in order to operate the

business of the original Handley.

89. Upon information and belief, although the defendants had been forewarned previously as to the errors in judgment, misrepresentations and failure of projections, financial or otherwise, by Kraemer and other directors and/or defendants herein, they failed to make investigations, check into or act as reasonable persons would in their own business in ascertaining and determining whether the transaction was feasible.

90. Upon information and belief, as a result of the foregoing herein mentioned, Airspur was damaged in the sum of more than $92,000.00.

FOR A THIRD CAUSE OF ACTION

91. Plaintiff repeats and realleges as part of this cause of action as if specifically set forth herein, the allegations made in paragraphs "1" through "72" and "75" through "89" of the complaint herein.

92. Upon information and belief, in or about September or October of 1969, the defendants Kraemer, Brooks, Andrews and Ryan consulted with each other regarding the purchase from Berwind Corp., hereinafter referred to as "Berwind" of its airline passenger operation in the Caribbean area, which was then being conducted by a wholly owned subsidiary of Berwind known as Tradewinds Airlines Inc., hereinafter referred to as "Tradewinds", and the purchase of 100% of the common stock of Tradewinds Investment Co., an affiliate of Tradewinds Airlines Inc.

93. Upon information and belief, defendants

had knowledge that the capital investments and loans initially made in Airspur totalled about $4,770,000.00, and that Airspur was then in its formative stages and required a good credit rating and an image to the general public that it was financially sound and responsible so as to induce other carriers as well as the general public to do business with it and use its passenger services.

94. Upon information and belief, the purchase price to be paid by Airspur for the acquisition as aforementioned from Berwind was a total sum of $3,550,000.00; $1,150,000.00 in cash and $2,400,000.00 in installments.

95. Upon information and belief, during the negotiations and discussions, taking into consideration the limited capital and cash that Airspur had as against the amount necessary for expansion and to have credit extended to it, no security interest or liens were to be given to Berwind for the balance of the purchase price which was to be paid in installments.

96. Upon information and belief, thereafter on October 22, 1969, Airspur entered into an agreement with Berwind whereby it purchased from Berwind 100% of the common stock of Tradewinds Investment Co., with a cash payment of $1,150,000.00 and installment payments of a balance of $2,400,000.00, represented by notes.

97. Upon information and belief, all of the defendants were kept informed of the negotiations, received various memoranda pertaining thereto, and received drafts of the proposed agreement between Airspur and Berwind.

98. Upon information and belief, the transaction involving Berwind was the most important acquisition undertaken by Airspur, representing an aggregate of cash payment and deferred obligation, of which $1,150,000.00 cash was an immediate payment.

99. Upon information and belief, all of the defendants had knowledge that the total investment in and loans made initially to Airspur was the sum of about $4,770,000.00.

100. Upon information and belief, drafts of the proposed agreement between Berwind and Airspur hereinbefore mentioned, were forwarded to all of the defendants.

101. Upon information and belief, the transaction with Berwind involved $3,550,000.00 and was of such importance to Airspur that defendants were obligated to make a thorough check and investigation of the operations of the business that Airspur was acquiring; to wit, the Caribbean operation by Tradewind, the probabilities of it being a successful operation, the provisions of the contract relating thereto and the effect on Airspur on signing said contract and as to other material matters relating to said contract and transaction.

102. Upon information and belief, although the deal with Berwind was of such great magnitude, the defendants should have, but did not, check and investigate same in such a manner and with such reasonable care as a businessman of ordinary prudence would have exercised in the management of his own affairs.

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103. Upon information and belief, reasonable investigation by defendants of the operations by Tradewinds of the passenger airline acquired in the Berwind transaction would have established that same were unsuccessful and that the transaction should not have been entered into by Airspur.

104. Upon information and belief, the defendants failed and omitted to perform their duties as directors and under the aforesaid agreement among stockholders, and were negligent as directors and/or officers and/or parties to the Agreement, Exhibit A hereto, in failing to make any check or investigation as to the Berwind transaction.

105. Upon information and belief, the Caribbean venture purchased from Berwind was a failure and resulted in the bankruptcy of Airspur Caribbean, a wholly owned subsidiary of Airspur formed to take over that venture, as a result of which Airspur was adjudicated a bankrupt.

106. Upon information and belief, as a result of the foregoing, Airspur was damaged in the sum of approximately $5,000,000.00.

WHEREFORE, plaintiff demands judgment against the defendants on the First Cause of Action for the sum of $1,116,904.00, on the Second Cause of Action for the sum of $92,000.00, and on the Third Cause of Action for the sum of $5,000,000.00, together with interest and such other and further relief as to this Court may seem just and proper in the premises, together with the costs and disbursements of this matter.

Dated: New York, New York
August 7th, 1972

Alex L. Rosen

ALEX L. ROSEN
Attorney for Plaintiff
225 Broadway
New York, New York

AGREEMENT AMONG STOCKHOLDERS

AGREEMENT dated as of July 24, 1969, among AIRSPUR CORPORATION, a Delaware corporation (hereinafter called "Airspur"), and the stockholders of Airspur named at the foot hereof (hereinafter collectively called the "Stockholders").

WHEREAS the authorized capital stock of Airspur consists of 500,000 shares of Common Stock, par value $0.10 per share (hereinafter called "Common Stock"), of which 125,000 shares are issued and outstanding;

WHEREAS the Stockholders identified at the foot hereof as "Group A Stockholders" (hereinafter collectively called "Group A Stockholders") own an aggregate of 125,000 shares of Common Stock (shares of Common Stock from time to time owned or held by Group A Stockholders being hereinafter called "Group A Stock");

WHEREAS the Stockholders identified at the foot hereof as "Group B Stockholders" (hereinafter collectively called "Group B Stockholders") have agreed to purchase an aggregate of 125,000 shares of Common Stock (shares of Common Stock from time to time owned or held by Group B Stockholders being hereinafter called "Group B Stock") and $3,750,000 aggregate principal amount of 8% Notes (hereinafter called the "Notes") of Airspur (said Group B Stockholders as holders of the Notes being hereinafter called the "Noteholders") pursuant to a Purchase Agreement, dated as of July 24, 1969, among Airspur and the Group B Stockholders (hereinafter called the "Purchase Agreement");

WHEREAS the Group B Stockholders wish to impose certain controls over Airspur as a condition to their investment in Airspur through the purchase of the Group B Stock and the Notes and it is a condition to the obligations of the Group B Stockholders to make such a purchase that this Agreement shall be duly executed and delivered by the parties hereto; and

EXHIBIT A

WHEREAS it is deemed to be in the best interests of Airspur and the Stockholders that provisions be made for continuity and stability of policy for Airspur and, to that end, that the Group A Stockholders and the Group B Stockholders share equally in the management of Airspur and the control of its policy to the extent and upon the terms and conditions herein stated, and that the Group A Stockholders be restricted in their power to sell Group A Stock;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein set forth, the parties hereby agree as follows:

1. (a) Unless the prior written consent of at least a majority of the shares of the Group B Stock held by Group B Stockholders who are also Noteholders at the time outstanding shall have been obtained by Airspur, the Stockholders shall vote whether directly or by written consent all the shares of Common Stock owned or held by them against any proposal (i) to amend the Certificate of Incorporation of Airspur or the By-laws of Airspur; (ii) to sell, lease, convey or exchange all of the properties and assets of Airspur or to merge or consolidate Airspur into or with any other corporation; and (iii) to approve or ratify any contract or act submitted for approval by the Board of Directors of the Company to the Shareholders of the Company.

(b) If the requisite number of Group B Stockholders who are also Noteholders shall deem a stock split necessary as provided in Section 8.07 of the Purchase Agreement, the Stockholders shall vote all shares of Common Stock owned or held by them in favor of such stock split.

(c) At each annual meeting of stockholders of Airspur, (i) the Group A Stockholders shall have the right to nominate three of the directors (hereinafter called the "Group A Directors") to be elected at such meeting, (ii) a majority of the shares of the Group B Stock held by Group B Stockholders who are also Noteholders shall have the right to nominate three of the directors (hereinafter called the "Group B Directors") to be elected at such meeting; and (iii) the Stockholders shall vote all shares of Common Stock owned or held by them in favor of the election of such six nominees.

(d) If any vacancy shall occur on the Board between annual meetings of stockholders of Airspur for any reason whatsoever and a special meeting of stockholders of Airspur is called to elect a new director to replace such former director, then the following provisions shall apply:

(i) if the former director was a Group A Director, then the Group A Stockholders shall have the right to nominate a successor director; and

(ii) if the former director was a Group B Director, then a majority of the shares of the Group B held by the Group B Stockholders who are also Noteholders shall have the right to nominate a successor director.

The Stockholders shall vote all shares of Common Stock owned or held by them in favor of the election of the successor director so nominated.

2. Each Group A Stockholder hereby agrees not to

[illegible] transfer any of the Group A Stock owned or held by it or him as long as any of the Notes are outstanding and unpaid in whole or in part unless such sale or transfer shall have been consented to in advance by a majority of the shares of Group B Stock held by the Group B Stockholders who are also Noteholders.

3. The Group B Stockholders who are also Noteholders shall have the right to purchase, in connection with any underwritten public offering of shares of Common Stock of the Company, sufficient of such shares as they may deem appropriate to avoid dilution of their interests in the Company.

4. The Group A Stock and the Group B Stock shall not be sold, assigned, transferred, pledged, or otherwise disposed of, and shall not be transferred on the books of Airspur, nor, unless the Company shall have otherwise agreed (such agreement to be evidenced by a resolution adopted by the Board of Directors), shall any shares of Common Stock of Airspur be issued or sold unless the assignee, transferee, purchaser, recipient or pledgee of such shares shall agree in writing to be bound by, and to comply with, all the then effective terms and provisions of this Agreement. The assignee, transferee or pledgee of Group A Stock or Group B Stock for the purposes of this Agreement shall be deemed to be a Group A Stockholder or a Group B Stockholder, respectively, and any purchaser or recipient of newly issued shares of Common Stock shall, for purposes of this Agreement, be deemed to be a Group B Stockholder and each such assignee, transferee, pledgee, purchaser and recipient shall also be deemed to be a Stockholder.

5. So long as this Agreement shall continue in effect, the following legend shall be conspicuously written, printed or stamped on the face of all certificates for shares of all Common Stock now or hereafter issued and outstanding and on the face of all certificates issued in substitution or exchange therefor or upon a transfer thereof:

> "NOTICE: The sale, assignment, transfer, pledge or other disposition of this Certificate and of the shares of stock represented thereby and, under certain circumstances, the voting of such shares, are subject to the terms and conditions of a Purchase Agreement dated as of July 24, 1969 and an Agreement Among Stockholders dated as of July 24, 1969, as each are now in effect or as the same may have been supplemented and amended, among Airspur Corporation and the parties thereto to all the provisions of which Agreements the holder of this Certificate, by the acceptance hereof, assents. A copy of said Agreements, to which reference is hereby made, are on file at the office of Airspur."

6. In the event of the invalidity of any part or provision of this Agreement, such invalidity shall not affect then enforceability of any other part or provision of this Agreement.

7. For purposes of this Agreement, the following present members of the Board shall be deemed to have been nominated by the Group A Stockholders and elected by the Stockholders, and the following present members of the Board shall be deemed to have been nominated by the Group B Stockholders and elected by the Stockholders:

Group A Stockholders	Group B Stockholders
B. V. Brooks	Leonard Andrews
Warren E. Kraemer	Joe Benning, Jr.
Jerry W. Ryan	Richard Mersinger

8. This Agreement shall terminate on the later of (i) the payment of all principal and interest due under the Notes or (ii) the expiration of three years from the date hereof.

9. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and to their executors, administrators, successors and assigns.

10. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

AIRSPUR CORPORATION

By _____
Chairman of the Board

Attest:

_____
Secretary

Group A Stockholders:

_____
B. V. Brooks

_____
Brooks, Torrey & Scott

_____
Warren E. Kraemer Associates, Inc.

Group B Stockholders:

BANKERS TRUST COMPANY,
as Trustee of various trust funds

By _____

MERCANTILE COMMERCE COMPANY

By_____

THE VALUE LINE SPECIAL SITUATIONS FUND, INC.

By_____

CHEMICAL BANK, as Trustee of The Chemical Bank New York Trust Company Commingled Employee Benefit Special Fund

By_____

BEECHMONT COMPANY, as Agent

By_____

THE DIEBOLD TECHNOLOGY VENTURE FUND, INC.

By_____

OHIO REAL PROPERTY, INC.

By_____

D. B. GLYNN & COMPANY

By_____

_____ [L.S.]

Raymond E. Rowland

THIS AGREEMENT is made the Fifteenth day of August One thousand nine hundred and sixty-nine BETWEEN HANDLEY PAGE LIMITED whose registered office is situate at The Aerodrome Radlett Road Colney Street St. Albans in the County of Herts. (hereinafter called "the Vendor") acting by KENNETH RUSSELL CORK of 19 Eastcheap London E.C.3. (hereinafter called "the Receiver") of the one part and HANDLEY PAGE AIRCRAFT LIMITED whose registered office is at 19 Eastcheap aforesaid (hereinafter called "the Purchaser") of the other part

WHEREAS:

(1) The Vendor carries on the business of manufacturers of and dealers in aeroplanes

(2) The Receiver was appointed Receiver and Manager of the Vendor on the Seventh day of August One thousand nine hundred and sixty-nine under a Debenture issued by the Vendor to Barclays Bank Limited on the Twenty-eighth day of October One thousand nine hundred and sixty-eight

(3) The capital of the Purchaser is One hundred pounds divided into One hundred shares of One Pound each all of which have been issued and are fully paid

(4) The Vendor is the beneficial owner of all the said issued shares of the Purchaser

NOW IT IS HEREBY AGREED as follows:-

1. THE Vendor shall as beneficial owner sell and the Purchaser shall purchase as from close of business on the Fifteenth day of August One thousand nine hundred and sixty-nine (hereinafter called "the Transfer Date") the business heretofore carried on by the Vendor (hereinafter called "the said business") as a going concern comprising

FIRSTLY the goodwill and undertaking of the said business with the exclusive right for the Purchaser to represent itself as carrying on the said business in continuation and in succession to the Vendor

SECONDLY the designs drawings patents trade marks and trade names (if any) and the benefit of all research

EXHIBIT B

and development belonging to the Vendor and used by it in connection with the said business and all right of action in connection therewith respectively THIRDLY the benefit of all subsisting contracts orders and engagements relating to the said business FOURTHLY all work-in-progress finished or partly finished goods and stock-in-trade owned by the Vendor and used in the said business

BUT EXCLUDING from the said sale and purchase:-

(a) the four completed Jetstream aircraft used for demonstration purposes and identified as follows:

G-ATXJ
G-ATXII
G-ATXI
G-AWBR

(b) One Herald aircraft (subject to certain leasing arrangements)

In the event of any dispute a certificate by the Receiver as to whether any particular asset of the Vendor passes to the Purchaser under this agreement shall be conclusive and binding on both parties

2. (a) The consideration for the said sale and purchase shall be as follows:

(i) For the assets FIRSTLY and SECONDLY described such sum as the Receiver (acting as expert and not as arbitrator) shall in due course certify to be fair and proper consideration

(ii) For the assets THIRDLY and FOURTHLY described Nine million Seven Hundred Thousand Pounds (£9,700,000) being the approximate book value thereof

(iii) In addition there shall be payable to the Vendor all sums receivable in respect of assets relating to Herald aircraft if sold within three months of the date hereof other than spares modifications repairs and technical publications

(b) The amounts provided for in sub-clause (a) hereof shall be paid in cash on demand being made on the Purchaser by the Vendor and until payment shall bear interest

at the rate of Two per centum over Bank rate for the time being

3. IT is the intention of the parties hereto that the Purchaser shall carry on the said business in the various premises at present occupied by the Vendor and with the plant tools equipment machinery and motor vehicles of the Vendor until such time as either the Vendor or the Purchaser gives four weeks notice to the other party that the Licence hereby granted is to cease whereupon the Purchaser shall vacate the said premises

4. THE Vendor shall retain the services of all employees engaged in the said business on the Transfer Date ("the Labour Force") and shall sub-contract the same to the Purchaser for a period of not more than six weeks from the Transfer Date on the following terms:

(i) The Purchaser shall indemnify the Vendor against the cost of all wages national insurance contributions and selective employment tax redundancy payments (if any falling to be paid by the Receiver) holiday pay and against all claims demands and liabilities (including all employers liabilities for personal injury or otherwise) in respect of the Labour Force

(ii) Payment of the aforesaid items shall (a) in the case of items ascertainable in advance be made to the Receiver not less than three days before the Vendor is liable to make such payment and (b) in the case of all other items forthwith upon any amount being agreed or determined

(iii) At the end of the said period of six weeks unless the Vendor and the Purchaser shall have mutually agreed a further period of sub-contracting the Purchaser will take over the employment of all employees constituting the Labour Force except any employees in respect of whom it shall have been given fourteen days prior notice that it does not

intend to offer employment to them

(iv) Neither the Vendor nor the Receiver shall incur any liability to the Purchaser in respect of failure of the Labour Force or any negligence on the part of the Labour Force or in respect of any matter arising out of this Clause

5. (a) The Vendor accepts responsibility up to the Transfer Date for and the Purchaser accepts responsibility as from the Transfer Date for all outgoings overheads and running expenses plus interest payable to Mount Street Holdings Limited apportioned to the Transfer Date on a normal accounting basis for any period up to or after such date respectively

(b) Any sums due from one party to the other in respect of the apportionments referred to in sub-clause (a) above shall so far as practicable be settled in cash on or as soon as possible after the Transfer Date

6. (a) Possession of all the assets hereby agreed to be sold shall be given to the Purchaser subject as herein mentioned on the Transfer Date

(b) Upon payment of the sums referred to in Clause 2 hereof the Vendor will (if required by the Purchaser) execute and deliver to the Purchaser an assignment of the goodwill in such form as the Vendor shall reasonably stipulate and the Receiver will join in the same (if required) for the purposes only of covenanting that he has not been party or privy to anything which would prevent the Vendor from assigning free from encumbrances

7. THE Vendor will make available for inspection and copying by the Purchaser all sales records and correspondence with suppliers and customers and all books of record and account as the Purchaser may resonably require but the statutory books and books of account of the Vendor shall not be included in the sale to the Purchaser

8. THE Purchaser shall indemnify the Vendor and the Receiver against all liability for goods and services ordered by the Receiver or ordered by the Vendor and confirmed by the

THIS AGREEMENT is made the seventeenth day of October One thousand nine hundred and sixty-nine BETWEEN

(1) HANDLEY PAGE LIMITED ("the Old Company") acting by Kenneth Russell Cork its duly appointed Receiver and Manager ("the Receiver")

(2) HANDLEY PAGE AIRCRAFT LIMITED ("the New Company")

(3) K.R. CRAVENS CORPORATION a Company incorporated under the laws of the State of Missouri ("Cravens")

WHEREAS:

(1) The Receiver was duly appointed Receiver and Manager of the Old Company on the Seventh day of August One thousand nine hundred and sixty nine pursuant to the powers contained in a Debenture dated the Twenty eighth day of October One thousand nine hundred and sixty eight issued by the Old Company to Barclays Bank Limited ("Barclays")

(2) The New Company was incorporated on the Fourteenth day of August One thousand nine hundred and sixty nine with a nominal capital of One hundred pounds (£100) all of which is issued and fully paid and is beneficially owned by the Old Company

(3) By an Agreement ("the Vending Agreement" which phrase shall mean the Vending Agreement as amended hereby dated the Fifteenth day of August One thousand nine hundred and sixty nine the Old Company sold to the New Company and the New Company purchased all those assets more particularly therein described on the terms therein set out

(4) Under the Vending Agreement the price of certai

Purchaser but not delivered or performed by the Transfer Date

9. THE Vendor will on the Transfer Date cease to carry on the said business except as regards the assets specifically excluded

10. IT is declared and agreed that save as expressly herein provided for the Purchaser assumes none of the liabilities of the Vendor

11. THE Purchaser shall pay (in addition to the formation expenses of the Purchaser) all legal and other costs and stamp duties of the Vendor and Purchaser in relation to the preparation and completion of this Agreement the transfer of all assets heretofore mentioned and the cost of and responsibility for the preparation of all necessary accounts of the Vendor up to and including the Transfer Date

AS WITNESS the hands of the parties hereto the day and year first above written

GNED by the said KENNETH RUSSELL)
ORK for and on behalf of HANDLEY)
AGE LIMITED in the presence of:-)

1. J.H. Harbinson
73 Chequers
Drive
Atlanta

Receiver and Manager of Handley Page Limited

INED by DAVID BRIAN LEES)
and on behalf of HANDLEY PAGE)
RCRAFT LIMITED in the)
tsence of:-)

J.H. Harbinson
as above.

Director of Handley Page Aircraft Limited

assets was left to be certified by the Receiver who intends to certify the price as hereinafter appears

NOW IT IS HEREBY AGREED AND DECLARED as follows:-

1. PURSUANT to Clause 2(a)(i) of the Vending Agreement the Receiver hereby certifies the fair and proper consideration for the assets Firstly described in the Vending Agreement at Fifty thousand pounds (£50,000) and for the assets Secondly therein described at Four million four hundred and fifty thousand pounds (£4,450,000) which amount is agreed by the New Company and Cravens

2. CRAVENS shall lend or procure the loan to the New Company of Two million pounds (£2,000,000) sterling or the United States Dollars equivalent thereof ("the Loan") of which One million pounds (£1,000,000) or the United States Dollars equivalent thereof shall be advanced on the Completion Date as hereinafter defined Five hundred thousand pounds (£500,000) or the United States Dollars equivalent thereof shall be advanced on or before the Thirtieth day of November One thousand nine hundred and sixty nine and Five hundred thousand pounds (£500,000) or the United States Dollars equivalent thereof shall be advanced on or before the Thirty-first day of December One thousand nine hundred and sixty nine The Loan shall carry interest at a rate not exceeding Fifteen per centum (15%) per annum Completion date shall be the 23rd day of October 1969

3. (A) IN lieu of the terms contained in Clause 2(b) of the Vending Agreement the amounts owing by the New Company to the Old Company under the Vending Agreement

(including the amount certified in Clause 1 hereof) shall be discharged as follows:-

(i) Five hundred thousand pounds (£500,000) on the Completion date

(ii) the balance (subject to the minimum payments referred to in sub-clause (C) of this Clause) as follows:-

(a) at the rate of Seventeen thousand five hundred pounds (£17,500) per Civil Aircraft (which in this Agreement shall mean the H.P. 137 Jetstream in any of its versions and any derivative thereof not being a "Military Aircraft" as hereinafter defined) sold leased or disposed of for value after the first twenty Civil Aircraft have been sold leased or otherwise disposed of since Completion date and whether manufactured by the New Company or under licence until the total of the amounts in (1) to (5) below equals to Eight million pounds (£8,000,000) (hereinafter referred to as the "Agreed Amount")

(1) the amounts paid by the New Company to the Old Company under this sub-clause (A)

(2) the net proceeds of the sale and lease-back arrangement (if any) referred to in Clause 7(b) hereof

(3) the amounts received by the Old Company from the new Company or from the U.K. Government in respect of the work referred to in exclusion (a) of Clause 1 of the Vending Agreement

- " -

(4) the amounts received by the Old Compar from the New Company pursuant to Claus 7(a) hereof if such shall be treated as capital payments in reduction of the aggregate amount payable under the Vending Agreement and hereunder as provided in the said Clause 7(a)

(5) the amounts received by the Old Company in respect of any disposal of its business in relation to the Handley Page Herald aircraft retained by the Old Company pursuant to the Vending Agreement

(b) thereafter at the rate of Ten thousand pounds (£10,000) per Civil Aircraft sold leased or disposed of as aforesaid

(c) In respect of each H.P. 137 Jetstream aircraft which shall be substantially modified for military purposes (herein called "Military Aircraft") at the rate of Five thousand pounds (£5,000) per Military Aircraft sold leased or disposed of for value

In all cases payment of the sums aforesaid shall be made by the New Company to the Old Company by the end of the month next following the month in which the entire proceeds of any such sale leasing or other disposal of each Civil Aircraft or Military Aircraft are received or at the end of the

fourth month following the completion of any such sale leasing or other disposal whichever first occurs

(iii) The Old Company shall have the right at all reasonable times to inspect or cause its accountants to inspect the books and records of the New Company in order to satisfy itself that the correct sums are paid under sub-clause (A)(ii) of this Clause

(B) ON the failure of the New Company to pay any amount payable under this Clause within Twenty one days of the same having become due and having been demanded by the Old Company the whole of the outstanding balance payable under the Vending Agreement and hereunder shall forthwith become due and payable with interest thereon from the date on which the outstanding balance becomes so payable until actual payment at the rate of Two per centum (2%) per annum over Bank of England rate for the time being

(C) THE moneys payable under sub-clause (A)(ii) of this Clause shall irrespective of the number of Civil Aircraft and/or Military Aircraft sold be not less than Two hundred and sixty two thousand and five hundred pounds (£262,500) in the calendar year One thousand nine hundred and seventy not less than Eight hundred and seventy five thousands pounds (£875,000) in the calendar year one thousand nine hundred and seventy one at the rate of One million and fifty thousand pounds (£1,050,000) in each subsequent calendar year or part year until the Agreed Amount shall have been paid in full and at the rate of not less than Six hundred

thousand pounds (£600,000) per calendar year thereafter Any payment to be made under this sub-clause shall be made on the Thirty first day of January following the year in question

4. CRAVENS will procure that without the written consent of Barclays

(a) the Loan will not be repayable or prepaid prior to the First day of January One thousand nine hundred and seventy one unless such pre-payment is made in circumstances in which a new loan of the same amount is made to the New Company on the date of such prepayment of the Loan at a rate of interest and on terms (including those referred to in (b) and (c) of this Clause) no less favourable to the New Company than those of the Loan In the event of such refinancing such new loan shall thereafter for the purposes of this Agreement be deemed to be the Loan

(b) the Loan will be made on terms that no failure by the New Company to pay interest prior to the First day of January One thousand nine hundred and seventy one shall constitute a default accelerating repayment of the principal amount of the Loan to a date prior to the First day of January One thousand nine hundred and seventy one or giving the right prior to such date to institute support or be privy to any proceeding or step taken or to be taken with a view to the liquidation of the New Company

(c) the Loan and any security given for the Loan shall rank second in priority to any security taken by Barclays for present and future advances made to the New Company

(d) the New Company will not prior to the First day of January One thousand nine hundred and seventy one become in a position to exercise any right of set-off in regard to the Loan

5. (A) CONDITIONALLY upon the implementation of the provisions of Clause 3(A)(i) hereof the Old Company shall sell (free from all charges liens and encumbrances) and Cravens and/or its nominees shall buy all of the shares of One Pound (£1) each in the New Company at the price of One hundred pounds (£100)

(B) THE said sale and purchase shall be completed on the Completion date when on payment of the purchase price there shall be handed to Cravens and/or its nominees the relevant share certificates and duly executed transfers to Cravens and/or its nominees

(C) SUBJECT to the following conditions being satisfied and to the Old Company giving notice forthwith of the fulfilment of each of the conditions (i) (ii) and (iii) below Cravens will and/or will use its best endeavours to procure that its nominees will offer for a period of three months from the date of such notice from the Company to transfer by way of exchange to the Old Company all the Ordinary Shares of the New Company then in issue The conditions referred to are:

(i) that amounts owing to all creditors of

the Old Company shall not exceed Ten thousand pounds (£10,000)

(ii) that quotation on The Stock Exchange for the Ordinary Shares in the Old Company shall have been continuously maintained since Completion date and that an assurance satisfactory to Cravens shall have been obtained from The Stock Exchange that quotation for the said Ordinary Shares will not be withdrawn consequent upon the transaction referred to in this sub-clause (C)

(iii) that the Old Company shall not since Completion date have carried on business and shall not have in issue share or loan capital other than the Ordinary Share Capital in issue at Completion date and shall not have granted any option in respect of any share or loan capital

(iv) that all necessary consents shall have been obtained and that arrangements satisfactory to Cravens or its nominee shall have been made whereby Cravens or its nominee will become the registered and beneficial owners of Ninety per centum (90%) of all the Ordinary Shares of the Old Company in issue after the Completion of such arrangements

PROVIDED THAT if Cravens and/or its nominees or any of them shall transfer its or their interest in the shares of the New Company or any part thereof Cravens

will or will use its best endeavours to procure that any such nominee will procure that any such transferee will execute an agreement to comply with the provisions of this Clause 5(B) such agreement to be by its terms binding on the successors and assigns of such transferee

6. PENDING the payment of the Agreed Amount or until such sooner time as Barclays is no longer a creditor of the Old Company Cravens shall deposit and/or shall procure that its nominees shall deposit with the Receiver the shares purchased under Clause 5(A) hereof and all other voting shares of the New Company from time to time in issue on the terms set out in the First Schedule hereto

7. PROVIDED THAT the New Company shall not be in breach of any of its obligations under Clause 3 hereof or under this Clause for a period of more than Twenty one days after the receipt of a notice from the Old Company specifying the breach and calling upon the New Company to rectify it the Licence granted by Clause 3 of the Vending Agreement shall continue until the final payment of all moneys payable by the New Company under the Vending Agreement and hereunder subject to the following terms:-

(a) Subject to the provisions of Clause 18 hereof the New Company shall from Completion date pay to the Old Company an annual amount of Three hundred and ten thousand pounds (£310,000) by quarterly instalments on the usual quarter days At the option of the Receiver (to be notified in writing to the New Company within Twelve months of

Completion date) such payments may be treated either as a Service Charge or as capital payment in reduction of the aggregate amount payable under the Vending Agreement and hereunder but shall not otherwise relieve the New Company of its obligations under Clause 3 hereof (b) the Old Company shall be entitled to enter into a "sale and lease-back" arrangement with the whole or substantially the whole of the factory premises and airfield at Radlett more particularly described in Part I of the Second Schedule hereto and the New Company shall accept a lease of the said premises (whereupon the payments under sub-clause (a) of this Clause shall cease) PROVIDED THAT (i) the total rent payable under such lease shall not exceed Ten per centum (10%) of the sale price (ii) the terms of such lease shall be subject to the approval of the New Company (such approval not to be unreasonably withheld) and (iii) the net proceeds of the sale after discharge of the existing mortgage and all costs and expenses (including the Receiver's remuneration in respect of such sale) shall be applied in reduction of the aggregate amount payable by the New Company under the Vending Agreement and hereunder but shall not otherwise relieve

the New Company of its obligations under Clause 3 hereof (iv) when the total amounts referred to in (1) to (5) inclusive of Clause 3(A)(ii)(a) shall equal or exceed Six million pounds (£6,000,000) the Old Company shall not thereafter be entitled to enter into a "sale and lease-back" arrangement without the prior consent in writing of the New Company

(c) in the event of the terms of sub-clause (b) of this Clause not applying the New Company shall be entitled to a transfer of the said freehold property (subject to the existing mortgage described in Part II of the Second Schedule securing an obligation which at that time will not exceed the sterling equivalent of Two million eight hundred thousand United States Dollars (U.S.$2,800,000)) without further payment other than the costs and expenses of such transfer upon the final discharge of all moneys payable by the New Company to the Old Company under the Vending Agreement and hereunder

(d) whether or not sub-clause (b) of this Clause shall apply the New Company shall be entitled to a transfer of all plant and machinery of the Old Company on and in the said freehold property and the leasehold premises referred to in Clause 8 hereof

without further payment other than the costs and expenses of such transfer upon the final discharge of all moneys payable under the Vending Agreement and hereunder

(e) pending the sale or final transfer of all or part of the said plant machinery and buildings the New Company shall keep the same insured to the full value thereof and shall keep the same in good repair and condition The Receiver and persons authorised by him may from time to time inspect all policies of insurance and the receipts for premiums and all plant machinery and buildings and if the New Company shall be in default of its obligations hereunder the Old Company may effect such insurances and carry out such repairs and maintenance as it reasonably thinks fit and the cost thereof shall constitute a debt due from the New Company to the Old Company

8. THE Old Company shall forthwith provide particulars of all leasehold premises owned by it and the New Company shall inform the Old Company which of such premises it wishes to take over Any premises not to be taken over shall be vacated the New Company remaining liable in respect of all leasehold premises under the terms of the Vending Agreement until the Receiver is able to disclaim personal liability The Old Company will as soon as practicable and subject to all necessary consents assign

to the New Company all leasehold premises which the New Company indicates it wishes to take over

9. THE Old Company and the New Company shall agree an independent firm of Chartered Accountants to settle all apportionments pursuant to the Vending Agreement and this Agreement

10. IN CONNECTION with Clause 4 of the Vending Agreement the New Company shall continue to indemnify the Old Company in respect of all members of the Labour Force (as therein defined) save that if the New Company shall at any time prior to the Thirty first day of December One thousand nine hundred and sixty nine notify the Receiver of any members of the Labour Force which it does not wish to employ it shall only be liable to indemnify the Old Company in respect of such members for a period of five weeks from the date of such notification (to enable the Receiver to discharge the same with at least four weeks' notice) On the First day of January One thousand nine hundred and seventy the New Company shall take over all employees of the Old Company except those in respect of which it shall have given notice as aforesaid and shall indemnify the Receiver against any claims under the Contracts of Employment Act or the Redundancy Payments Act

11. THE New Company shall from the Completion date assume responsibility for all payments to the Pension Schemes of the Old Company and shall generally do what is necessary to take over the continued pension arrangements of all employees taken over by it

12. THE Vending Agreement shall be read and construed as follows:-

(i) as if the property Thirdly described in Clause 1 had specifically mentioned the benefit of all leases and hiring agreements of plant machinery and tools but was subject to the general qualification "in so far only as the Old Company is able to transfer the same"

(ii) as if it contained an additional clause numbered 9A:

"The Purchaser shall accept full liability for all warranties given by the Vendor in respect of all H.P. 137 Jetstream aircraft sold prior to the Transfer Date and shall indemnify the Vendor in respect of all claims thereunder and shall maintain the usual servicing facilities and product support of all past products other than the Handley Page Herald aircraft of the Vendor and shall maintain such insurances as were normally and reasonably maintained by the Vendor in respect of such past products"

(iii) as if as from Completion date there were deleted from Clause 5(a) the words "plus interest payable to Mount Street Holdings Limited"

(iv) as if in lieu of exclusion (a) to Clause 1 the following had appeared:-

"(a) sums received or receivable after the Sixteenth day of October One thousand nine hundred and sixty nine in respect of

work carried out in connection with the contracts with the U.K. Government up to the Sixteenth day of October One thousand nine hundred and sixty nine"

(v) as if jigs and tools together with the Four (4) prototype aircraft identified as follows: G-ATXJ G-ATXH G-ATXI and G-AWBR were expressly included in the assets Secondly described in Clause 1

(vi) as if in Clause 1 the words "other than that in respect of the Handley Page Herald aircraft" had appeared immediately before the words "heretofore carried on by the Vendor" and as if Clause 2(a)(iii) were omitted.

(vii) as if in Clause 1 the words from "In the event of" down to the end of the Clause had not appeared

13. THE New Company shall pay (i) the stamp duty (if any) payable on this Agreement (ii) all costs incurred or to be incurred by the Old Company in complying with its Statutory obligations the preparation and audit of Accounts and the maintenance of its Registers and Stock Exchange quotation PROVIDED THAT without the consent of the New Company the liability under (ii) shall not exceed Five thousand pounds (£5,000) per annum

14. THE New Company shall grant to the Receiver all rights of access and other facilities including use of an office and staff which he may reasonably require in the performance of his duties as the Receiver of the Old Company.

15. THE Old Company HEREBY WARRANTS AND UNDERTAKES with the New Company in the terms of the warranties and undertakings set forth in the Third Schedule hereto and so that the remedies of the New Company in respect of any breach of any such warranty or undertaking shall continue to subsist notwithstanding the completion of the sale and purchase hereunder PROVIDED THAT the New Company shall have no remedy in respect of any such breach unless the damage flowing from such breach (or inter-related group of breaches) amounts to Five thousand pounds (£5,000) or more There shall not be implied on the part of the Old Company any warranties whether by Statute or Common Law except such as are expressly contained in the said Third Schedule and the Receiver shall incur no personal liability hereunder. Any amounts due from the Old Company to the New Company for any breach of warranty may forthwith be set off against the aggregate amount payable by the New Company under the Vending Agreement and hereunder but shall not otherwise relieve the New Company of its obligations under Clause 3 hereof

16. (A) THE New Company may by giving notice to the Old Company within seven days of Completion date elect to acquire the value of the work referred to in exclusion (a) to Clause 1 of the Vending Agreement on payment to the Old Company of the sum of Seven Hundred and fifty thousand pounds (£750,000) such sum to be discharged by an assignment to the Old Company of the first £750,000 of all moneys from time to time owing to the New Company by the U.K. Government The amount received by the Old Company from the New Company under

this Clause or the amounts received by the Old Company from the U.K. Government under this Clause shall be treated as a reduction of the aggregate amount payable under the Vending Agreement or hereunder but shall not otherwise relieve the New Company of its obligations under Clause 3 hereof

(B) THE New Company hereby irrevocably authorises and directs the U.K. Government to pay direct to the Old Company all sums to which the Old Company is entitled pursuant to exclusion (a) to Clause 1 of the Vending Agreement and will execute all such further authorities as may be necessary to give effect to this provision Provided that no notice of this sub-clause shall be given to the U.K. Government unless seven days shall have elapsed from Completion date and the New Company shall not have exercised its election pursuant to sub-clause (A) of this clause

17. (a) THE Old Company shall not sell its business in respect of the Handley Page Herald aircraft unless it shall first have offered to sell such business to the New Company in accordance with the following procedure

(i) the Old Company on receipt of an offer from a third party to purchase such business which offer is acceptable to the old Company shall forthwith deliver by hand to the New Company notice in writing setting out the details of the business which the Old Company intends to sell together with the price and other terms which have been offered therefor

(ii) if the New Company shall within forty eight hours of the said notice deliver by hand to the Old Company a counter-notice stating that it wishes to purchase the said business on the terms set out in the said notice together with any initial payment as may be due under the said terms then the Old Company shall be bound to complete such sale to the New Company on such terms

(b) The amount received by the Old Company from the New Company or from a third party under the terms of a sale referred to in sub-clause (a) above shall be treated as a reduction of the aggregate amount payable under the Vending Agreement or hereunder but shall not otherwise relieve the New Company of its obligations under Clause 3 hereof

(c) Until such time as the Old Company shall dispose of its Handley Page Herald aircraft business and with effect from the Fifteenth day of August One thousand nine hundred and sixty nine the New Company shall provide on normal commercial terms servicing facilities and product support in respect of Handley Page Herald aircraft and will be entitled to all amounts received or receivable therefor and shall be entitled without cost and without any obligation to replace the same to consume and/or utilize any of the stock or other property of the Old Company which it shall require therefor Provided that the New Company shall at all times maintain an adequate supply of support products (which shall be the property of the Old Company) to provide for all reasonably foreseeable service requirements

18. (A) WHEN the total amounts referred to in (1) to (5) inclusive of Clause 3(A)(ii)(a) shall equal the Agreed Amount the Old Company shall forthwith if so required by the New Company and without cost to the New Company (other than the costs of the transfer which shall be borne by it) procure the transfer to the New Company of Sixty per centum (60%) of the beneficial interest in the freehold land more particularly described in Part I of the Second Schedule hereto (subject to any then existing mortgage) and in the machine tools plant and machinery of the Old Company whether or not permanently affixed to the freehold or leasehold premises of the Old Company and after such transfer the New Company and the Old Company shall until payment by the New Company to the Old Company of the aggregate amount due under the Vending Agreement and hereunder hold such beneficial interest as tenants in common in the proportions of Sixty per centum (60%) and Forty per centum (40%) respectively Provided that

(a) in the event of the Old Company having exercised its right under Clause 7(b) hereof to effect a sale and leaseback arrangement this clause 18 shall have no effect except in relation to items not included in such sale and leaseback

(b) the Old Company shall have no right during the existence of such tenancy in common to apply to the Court for the sale of the said freehold land and/or the said machine tools plant and machinery or any interest therein

(c) the existence of such tenancy in common shall in no way affect the licence granted to the New Company under the Vending Agreement and hereunder save that the annual amount payable by the New Company to the Old Company under Clause 7(a) hereof and shall thereupon be reduced to an amount of One hundred and twenty four thousand Pounds (£124,000) per annum and shall cease upon the transfer of such property pursuant to Clause 7(c) and (d) hereof

(d) if the New Company shall have acquired a Sixty per centum (60%) interest in the said freehold property it shall thereafter be responsible both as to capital and interest for Sixty per centum (60%) of the money secured by any then existing mortgage

(B) IN the event that after the acquisition of a Sixty per centum (60%) interest in the said freehold property it is agreed between the New Company and the Old Company to effect a sale and leaseback arrangement the net proceeds of such sale which are attributable to the Forty per centum (40%) interest of the Old Company shall be applied in reduction of the aggregate amount payable by the New Company under the Vending Agreement and hereunder but shall not otherwise relieve the New Company of its obligations under Clause 3 hereof

19. THE Old Company shall deliver to the New

Company forthwith on Completion date all movable equipment (other than such used exclusively in connection with the Handley Page Herald aircraft) motor vehicles office furniture and all other personal chattels used by the Old Company in connection with its operations at Radlett other than its books of account seal and statutory books provided that there shall not be delivered to the New Company under the Vending Agreement or hereunder any machine tools plant and machinery which are listed in the books of the Old Company under those headings Such movable equipment motor vehicles office furniture and other personal chattels shall save insofar as expressly otherwise provided in the Vending Agreement or this Agreement be deemed to have been included

(i) in the case of items charged in the books of the Old Company as research and development expenditure as items Secondly described in Clause 1 of the Vending Agreement and

(ii) in the case of all other items delivered under this Clause as items Fourthly described in Clause 1 of the Vending Agreement

Such machine tools plant and machinery as are not delivered under this Clause shall be subject to the licence contained in Clause 3 of the Vending Agreement as extended by Clause 7 hereof

20. SAVE as herein expressly provided Cravens shall incur no liability in respect of any breach of the Vending Agreement or this Agreement by the New Company

21. EXCEPT as expressly provided herein any notice demand or other communication shall be given or

sent by hand or by prepaid letter (despatched airmail in the case of an overseas communication) sent by first class mail addressed in the case of the Old Company and the New Company to their respective registered offices with in the case of the Old Company a copy to the Receiver in the case of the Receiver to 19 Eastcheap London E.C. 3 and in the case of Cravens to Messrs. Thompson Mitchell Douglas Neill and Guerri 705 Olive Street St. Louis Missouri M.O. 63101 United States of America and if sent by post shall be deemed to have been received Forty-eight hours after the same was posted

22. IN the event that Cravens shall not be informed by the U.K. Government that the U.K. Government is willing to give to the New Company a contract for the development for the conversion of Victor Bombers Cravens shall have the right to terminate this Agreement by leaving written notice to that effect at the office of the Receiver not later than 4p.m. B.S.T. Monday the 20th October 1969 whereupon all liabilities under this Agreement shall cease

23. THIS Agreement shall be governed in all respects by the Laws of England

AS WITNESS the hands of the authorised representatives of the parties hereto the day and year first above written

THE FIRST SCHEDULE above referred to

1. The said shares shall forthwith be transferred into the name of Cravens and/or its nominees and the Certificates therefor shall be deposited with duly executed blank transfers with the Receiver to be held on the terms of this Schedule and shall remain so deposited until the payment of the Agreed Amount (as defined in Clause 3(A)(ii)(a)) or until such sooner time as Barclays is no longer a creditor of the Old Company

2. If the New Company shall be in breach of any of the terms of Clause 3 or Clause 7 of this Agreement and such breach shall continue for Twenty-one days after notice specifying the same and calling upon the New Company to rectify the same shall have been given the Receiver may complete such blank transfers in favour of a nominee company of Barclays and/or its nominees as transferee and lodge the same with the New Company for registration whereupon the New Company will forthwith register such transfers

3. The said nominee Company and/or its nominees shall thereafter hold the said shares as nominees for Cravens and/or its nominees but shall nevertheless act on the directions of the Receiver and shall sign such documents call such Meetings and exercise such votes as may be requisite to do all or any of the following acts

(a) remove all or any of the Directors of the New Company

(b) appoint new or additional Directors of the New Company

(c) procure the winding up of the New Company

4. Whilst such shares are so deposited during the period referred to in paragraph 1 above Cravens agrees that it and/or its nominees will not vote on any Resolution for the winding up of the New Company except with the consent of the Receiver

5. The said nominee Company and/or its nominees shall not be required to ensure that the Receiver has become entitled to exercise any right hereunder but may accept any written statement by the Receiver that he has become so entitled

6. Subject as aforesaid the said nominee Company and/or its nominees shall act on the instructions of Cravens or its nominee

THE SECOND SCHEDULE

Part I

Freehold property at Radlett in the County of Hertford and edged red on the plan initialled for identification by the solicitors to the parties hereto

Part II

Legal Charge dated the Nineteenth day of October One thousand nine hundred and sixty-seven and made between the Old Company (i) and Mount Street Holdings Limited (ii) a copy of which has been supplied to Cravens

THE THIRD SCHEDULE

The Old Company gives the warranties and undertakings

set out below (being those referred to in Clause 15 of the Agreement)

Each of the warranties and undertakings is given subject to the matters stated in the Letter of Disclosure (if any) already delivered to Cravens' solicitors but is otherwise subject to no qualifaction whatever No letter document or other communication shall be deemed to constitute a disclosure for the purposes of this Schedule unless the same is expressly referred to in the Letter of Disclosure

(a) The Receiver has not knowingly withheld any facts which could materially and adversely affect the value of the property business and undertaking of the new Company or of the Shares in the New Company;

(b) that the facts stated in Recitals (1) and (2) to this Agreement are correct;

(c) that the New Company has an absolute title free from all liens and other encumbrances to all the assets transferred to it by the operation of the Vending Agreement and this Agreement;

(d) that no creditor of the Old Company has any right against the New Company or against the assets of the New Company transferred to it by the operation of the Vending Agreement and this Agreement arising out of any dealings between such creditor and the Old Company;

(e) that the freehold and leasehold premises of the Old Company in which the New Company

has an interest under the Vending Agreement or this Agreement have been disclosed to the Purchaser that the Old Company has a good and marketable title to its premises and that all developments on and use of the properties of the Company comply with the Town and Country Planning Acts affecting the same PROVIDED THAT any claim under this warranty shall be made in writing within Twelve months of the Completion date;

(f) that the New Company has no mortgage charge hire purchase commitment (except hire purchase commitments taken over from the Old Company) guarantee bank overdraft or other similar indebtedness outstanding and the New Company has not agreed to create or issue any mortgage or charge;

(g) that the New Company has valid insurances in respect of its property and business against such risks as are normally insured against by companies carrying on similar businesses for such amounts as would in the circumstances be normal for such companies

(h) that since incorporation no material contracts other than the Vending Agreement and contracts in the ordinary and normal course of the New Company's business and no contract of service with or agreement granting or altering the right to any superannuation or other benefit to a Director has been entered into;

(i) that there are not in existence any service agreements with Directors and that the New Company has not since incorporation had any employees;

(j) that since incorporation the New Company has not other than under the Vending Agreement and this Agreement or in the normal course of business contracted any material capital commitment

(k) that at the Completion date the New Company's Memorandum and Articles of Association are in the form supplied to Messrs. Freshfields and that since incorporation the New Company has not altered its authorised or issued share capital;

(l) that the New Company is not engaged in any litigation or arbitration and that the Old Company has no knowledge of any facts likely to give rise to such litigation or arbitration proceedings;

(m) that at Completion date the Barclays overdraft is of the amount certified by the Receiver and that the New Company has no other borrowings;

(n) that there are no agreements in force which call either at the date hereof or in the future for the issue of or accord to any person or company the right to call for the issue of any share or loan capital of the New Company;

(c) that the Company has not since incorporation date declared paid or made any dividend or other distribution;

(p) that all returns particulars resolutions and other documents required to be filed with or delivered to the Registrar of Companies by the New Company have been or before Completion will be correctly and properly prepared and so filed or delivered;

(q) that the New Company is the beneficial owner of each of the patents Registered Designs and Technical Knowledge previously owned by the Old Company and knowhow employed by it in the course of its business and that it is not a party to any continuing agreement whereby it is granted the right to manufacture use exercise and sell any product or process or to any continuing agreement for the acquisition by it of any technical knowledge or knowhow;

(r) that no contract or other arrangement exists between the Old Company and any subsidiary or associated company of the Old Company which materially affects the future production of the Aircraft Associated Company shall mean any company in which the Old Company holds over Twenty per centum (20%) of the issued voting share capital

SIGNED by KENNETH RUSSELL CORK as Receiver and Manager for and on behalf of HANDLEY PAGE LIMITED in the presence of:-) K.R. Cork

J.H. Thomlinson
73 Cheapside
E.C. 2

Solicitor

SIGNED by JOHN DEREK NAYLOR for and on behalf of HANDLEY PAGE AIRCRAFT LIMITED in the presence of:) J.D. Naylor

J.H. Thomlinson
as above

SIGNED by KENTON ROBINSON CRAVENS for and on behalf of K.R. CRAVENS CORPORATION in the presence of:-) K.R. Cravens

J.M. Romanes
1 Bank Buildings
Princes Street
London E.C. 2

Solicitor

THIS AGREEMENT is made the second day of June One thousand nine hundred and seventy BETWEEN HANDLEY PAGE AIRCRAFT LIMITED of Colney Street St. Albans Hertfordshire (hereinafter called "the Vendor") acting by RICHARD NORMAN DARBEY LANGDON of St. Mary Axe House St. Mary Axe London, E.C.3. (hereinafter called "the Receiver") of the one part and AMERICAN JETSTREAM INC a Corporation organised and existing under the laws of the State of Delaware (hereinafter called "the Purchaser") of the other part

WHEREAS

(1) In pursuance of an Agreement dated Fifteenth day of August One thousand nine hundred and sixty nine between the Vendor and Handley Page Limited (a copy of which is exhibited hereto and marked "A") as amended by an Agreement dated Seventeenth day of October One thousand nine hundred and sixty nine made between Handley Page Limited Handley Page Aircraft and K.R. Cravens Corporation (a copy of which is exhibited hereto and marked "B" the latter sold its goodwill undertaking and certain assets to the Vendor

(2) The Receiver was appointed Receiver and Manager of the Vendor on the Eleventh day of March One thousand nine hundred and seventy under a Debenture issued to the Mercantile Trust Company National Association of St. Louis Missouri United States of America

NOW IT IS HEREBY AGREED as follows :-

1. THE Vendor hereby grants to the Purchaser an option to purchase the following assets on the terms and conditions hereinafter contained :-

FIRSTLY the goodwill and undertaking of the business of the Vendor relating to the H.P. 137 "Jetstream" Aircraft with the exclusive right for the Purchaser to represent itself as carrying on the said business in continuation and in succession to the Vendor

EXHIBIT C

SECONDLY the designs drawings patents trade marks and trade names (if any) and the benfit of all research and development belonging to the Vendor and used by it in connection with the said business and all rights of acti in connection therewith respectively

THIRDLY all right title and interest in the work-in-prog finished or partly finished goods and stock-in-trade and all jigs and tools owned by the Vendor and used in the said business (details of which are set out in the First Schedule hereto)

FOURTHLY all right title and interest in the work-in-progress finished or partly finished goods and stock-in-trade and all jigs and tools owned by the Vendor and use in the said business (excepting the project known as the Jetstream 230 Project) The items fourthly described abo include the items more particularly described in the Second Schedule hereto

2. THE option hereby granted may be exercised by notice in writing given by the Purchaser to the Vendor and received by t Vendor at any time on or before 22nd July 1970. Subject to the receipt by the Vendor of such notice exercising the optio in manner aforesaid completion of the sale and purhcase of the assets referred to in Clause 1 hereof shall take place on 29t July 1970 or such earlier date as the Purchaser may specify being not less then 7 days after receipt of the said notice.

3. THE consideration for the option hereby granted is the sum of Thirty Thousand pounds which sum shall be paid forthwit on the signing hereof and shall in no circumstances be returnable to the Purchaser. The consideration for the sale and purchase shall be the sum of Two hundred and seventy thousand pounds which shall be paid on completion

4. THE Receiver hereby declares that to the best of his knowledge and belief the Vendor has subject as disclosed in writing to the Purhcaser a good and marketable title free fro all liens charges and encumbrances (other than the potential

claim for Customs Duty arising under the General Bond for Duty free Importations mentioned in Clause 7 below) to the assets listed in the First and Second Schedules but the Receiver gives no warranty to that effect and the Receiver shall not be personally liable in the event of the Vendor's title to any such assets proving to be defective nor any warranty as to the merchantability or fitness for any particula purpose of any of the assets hereby agreed to be sold. The Receiver agrees to use his best endeavours to procure any consents of third parties which may be required to enable the Purchaser to take delivery of the assets referred to in Clause 1 hereof and assist the Purchaser so far as possible (but at the expense of the Purhcaser) in acquiring any rights or asset relating to the H.P.137 "Jetstream" Aircraft which may be owned by or vested in any third party It is expressly agreed and understood that any assets sold by the Vendor to Hawker Siddeley Aviation Limited pursuant to an Agreement dated the Fifteenth day of April One thousand nine hundred and seventy (a copy of which has been supplied to the Purchaser) and any assets comprised in the said Jetstream 230 Project are excluded from the sale and purchase to be made pursuant to any exercise of the option herein contained

5. So far as the various aircraft and other assets in the Second Schedule are concerned it is hereby agreed and understood that these or part of them may be the property or may be subject to liens or claims of third parties in addition to those disclosed in writing to the Purchaser pursuant to Clause 4 hereof and it is further agreed that the Receiver shall be entitled to deal with the assets listed in the Second Schedule at any time before completion in such manner as he shall in his absolute discretion think fit provided that any costs and expenses of whatsoever nature incurred by the Receiver in so dealing with said assets shall be added to the purchase price and any proceeds (excluding

any benefit received by The Vendor as a result of reduction in liability for customs duty) arising from any disposal of any of the said assets shall be deducted from the purchase price. Without prejudice to Receiver's absolute discretion to deal with the said assets the Receiver undertakes that he will whenever possible inform the Purchaser or its agent of any action he proposes to take pursuant to this clause before taking such action. The Receiver may deal with any of the assets listed in the First Schedule on the same basis as those listed in the Second Schedule with the consent of the Purchaser or its agent.

6. THE Purchaser shall be entitled to take possession of the assets, subject to the option herein contained forthwith upon completion and the Receiver shall then permit the Purchaser's representatives employees and agents to enter upon the premises occupied by the Vendor at Radlett Aerodrome Hertfordshire for that purpose subject to the supervision of the Receiver The Receiver undertakes to use his best endeavours to assist the Purchaser in obtaining any licence required by the Purchaser to occupy part of the premises at Radlett Aerodrome

7. THE Purchaser hereby undertakes that it will procure the release forthwith on completion by the Commissioners of Customs and Excise of the Vendor and Barclays Bank Limited from the General Bond for Duty Free Importations dated the Twenty sixth day of September One thousand nine hundred and sixty nine given jointly and severally by the Vendor and Barclays Bank Limited to the said Commissioners in the sum of Two hundred and fifty thousand pounds and the substitution therefore of a new Bond entered into by the Purchaser with the said Commissioners in at least an equivalent sum

8. THE Purchaser shall pay all stamp duties in relation to this Agreement

9. THIS Agreement shall be governed by and construed in accordance with the laws of England

AS WITNESS the hands of the parties hereto the day and year first above written

THE FIRST SCHEDULE above referred to

PART A - JETSTREAM AIRCRAFT

Owned by Handley Page Aircraft

Construction No.	British Registration Mark	Production No.	Mk. or Series
198 (Prototype)	G-ATXH	P.P.1	2
199 (Prototype)	G-ATXI	P.P.2	3M
~~200 (Prototype)~~	~~G-ATXJ~~	~~P.P.4~~	~~1~~
258 (Prototype)	G-AWBR	P.P.6	3M
211 (Development)	G-AXFV	10	11
222	G-AXUI	22	1
		20	C.10A/3M(Test Airframe)
245	G-AXUM	44	
246	G-AXUN	45	
248	G-AXUO	46	
249	G-8-14	48	
251	G-AXUP	49	
259	G-AXUR	50	
261		52	
262		53	
263		54	
264		56	
265		57	
266		58	
267		60	

Test Aircraft in Test House

PART B - SPARES

A. BILTON OFFICES AND HANGAR

1. Office 94

Instruments and P.A. items. Bonded Stores Status.

2. Office 95

Avionics, ferry kit spares and instruments.

3. Manager's Office - far end of Hangar

P.A. items - Flight Control items.

4. Main Shop Area

a) Semi-assembled aircraft (standing on leased trolleys etc.)
b) Racks of B.O. and P.A. items
c) W.I.P. on benches
d) A.G.S. items in racks and cupboards to be consolidated and stacked
e) Part finished items on racks
f) Jetstream W.I.P. stores
g) Jigs.

B. MAIN CORK HANGAR (Colney Street)

1. Herald Product Support Stores - Bay 15

a) Jetstream Product Support Stores.

2. Bay 16 & 17

b) Jetstream manufactured W.I.P. stores

3. Main Hangar Area

a) Wiring loom area - W.I.P.
b) Tailplane area - W.I.P. (also jigs and leased trolley)
c) Ground Equipment e.g.Jacks supporting aircraft.

C. A. HANGAR

1. Central Bonded Stores & Quarantine Area

a) High value P.A. items
b) High value B.O. items
c) A.G.S. Stores

2. Pre Selection Stores

a) Manufactured components - Twelve cabin pressure gauges

3. Bloomingdale Shop

a) Imported items e.g. de-icers.

4. Tool Stores

a) Jetstream special tools

D. PARK STREET

1. Test House - Test Tank with aircraft, (experimental cooling rig? ownership)

2. Hangar

a) Jetstream stores - P.A. items, including engines
b) High value items
c) Mk.3 manufactured items on mezzanine floor

3. Aircraft scrapped Fuselages

a) Two fuselages - Mk.1 and Mk.3

E. OUTLYING BUILDINGS

1. Terminal Building

a) Jetstream Product Support Stores items -

2. Fuel Line Test Shed (rear of A. Hangar)

a) W.I.P.

F. Various propellers, AZ 14 and A16 Engine

G. OTHER ITEMS

1. Stores at Export Packing Services Limited

2. Jigs and Specific production aids in B1 and Main Cork hangar

3. Flight and Wind test models.

THE SECOND SCHEDULE above referred to

PART A Aircraft

Construction No.	British Registration Mark	Mk. or Series
243	G-8-13	1
200 (Prototype)	G-ATXJ (Production number P.P.4)	1
201	G-ATXK	1
203	G-AXEK	1
234	G-8-IL	1
241	G-AXPX	1
207	G-AXEL	1
U.S.A.F. Aircraft not complete		
219		3M
226		3M
228		3M
232		3M
236		3M
239		3M
242		3M
244		3M
247		3M
250		3M
260		3M

Demonstration fuselage

PART B.

1. Spares held at London Airport

2. Spares held at Field Aircraft Services Limited

3. Ferry Kits held by I.J.C. in U.S.A.

4. U.S.A.F. spares at Export Packing Services Limited

5. U.S.A.F. spares situated at B1 hanger offices

6. U.S.A.F. Propellers and Garrett Engines

7. Propellers at Herts & Sussex Aviation Limited.

8. Propellers ex Shorts

9. Spares etc. at C.S.E. Aviation

10. Spares held by I.J.C. or other parties in U.S.A. or Canada

11. Ferry Kits located on aircraft in the U.S.A. or Canada

12. Engines at R.R.T.I. in France.

13. Mono-rail Crane in B1 Hanger.

14. Half-interest in test tank.

SIGNED by the said RICHARD NORMAN DARBEY LANGDON in the presence of:-

Martin Hancock
11, Old Jewry,
London E.C.2.
Solicitor.

SIGNED by
for and on behalf of AMERICAN JETSTREAM INC. in the presence of:-

[illegible]
[illegible]
[illegible]
Solicitor.

12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

IN THE MATTER	:	
OF	:	70 B. 577
AIRSPUR CORPORATION, a/k/a AIRSPUR NEW YORK,	:	NOTICE OF MOTION
Bankrupt.	:	

- -x

NOV

S I R :

PLEASE TAKE NOTICE, that upon the Proof of Claim (No. 229) filed by Ohio Real Property, Inc. on the Order of this Court dated April 21, 1972 subrogating L. J. Rauth as Trustee to the rights of Ohio Real Property, Inc., the "Objection to Claim" of Ohio Real Property, Inc. of the Trustee dated August 17, 1972, the annexed affidavit of John MacCrate III and upon all the pleadings and proceedings had heretofore herein, the undersigned will move this Court before the Hon. Roy Babitt, Referee in Bankruptcy at his chambers at the United States District Courthouse, Foley Square, New York, New York on the 5th day of December, 1972 at 1:30 P.M. or as soon thereafter as counsel can be heard for:

1. An Order pursuant to Rule 56 of the Federal Rules of Civil Procedure striking the objection and granting judgment allowing the Claim (No.229) of Ohio Real Property, Inc.

2. An Order pursuant to Rule 12(b) of the Federal Rules of Civil Procedure for judgment dismissing the Counterclaims, Offsets, and Request for Affirmative Judgment on the grounds that this Court lacks subject-matter jurisdiction of same and on the grounds that this Court lacks jurisdiction over Ohio Real Property, Inc. with regard to such relief or Alternatively for judgment pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure dismissing the Counterclaims, Setoffs and Request for Affirmative Judgment on the grounds that the pleadings thereon fail to state a cause of action upon which relief can be granted

together with such other and further relief as to this Court seems just.

Dated: New York, New York
November 7, 1972.

Yours, etc.,

BIGHAM ENGLAR JONES & HOUSTON
Attorneys for Ohio Real Property, Inc.

By _____
A Member of the Firm
Office & P. O. Address
99 John Street
New York, New York 10038
732-4646

TO:
ALEX ROSEN, ESQ.
Attorney for Trustee in Bankruptcy
225 Broadway
New York, New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF AIRSPUR CORPORATION, a/k/a AIRSPUR NEW YORK, Bankrupt.	70 B. 577 AFFIDAVIT IN SUPPORT OF MOTION OF OHIO REAL PROPERTY, INC. WITH RESPECT TO OBJECTIONS ETC.

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOHN MacCRATE III, being duly sworn, deposes and says:

1. That he is an attorney duly admitted to practice before the United States District Court for the Southern District of New York, is associated with the firm of Bigham Englar Jones & Houston, attorneys for claimants, L. J. Rauth as Trustee and for Ohio Real Property, Inc., a dissolved Ohio corporation and as such is fully familiar with all the pleadings and proceedings had heretofore herein.

2. That this affidavit is submitted in support of the motion of L. J. Rauth as Trustee to allow his claim and the motion of L. J. Rauth as Trustee and of Ohio to strike the Trustee Lipper's "Offsets, Counterclaim and Request for affirmative judgment." This affidavit is submitted to highlight for the Court the undisputed facts and pleadings which establish that the alleged "objections,

offsets and counterclaims" must be dismissed.

THE OBJECTIONS

3. In the first instance we respectfully refer the Court to the "Objections" to Claim No. 229 submitted by the Trustee in Bankruptcy. Nowhere in that document or elsewhere in the massive court file are any grounds for an "Objection" to Ohio's claim stated.

The claim of Ohio Real Property is predicated on a five year eight (8%) per cent note issued to Ohio by Airspur on July 24, 1969 The note was properly submitted to the Court as part of Ohio's proof of claim, and on April 21, 1972 an order was entered subrogating and substituting L. J. Rauth as Trustee under a certain assignment piece to Ohio's claim. The Trustee does not allege or contend that Ohio did not in fact lend the sum of $114,750.00 to Airspur as and for consideration for the issuance of the note or that Ohio has not properly presented its claim to the court.

In such circumstances, where no "objection" exists, the Court must allow the claim and enter judgment thereon.

THE COUNTERCLAIMS

4. Not only does the Trustee in Bankruptcy fail to state any "objection" to Ohio's claim but he also alleges a meritless "counterclaim and request for affirmative judgment" which should also be dismissed.

5. In the first instance the counterclaims arise

out of Ohio's alleged responsibility for the acts of one Richard Mersinger. However by virtue of the assignment piece dated March 24, 1972 and the Order of Subrogation dated April 21, 1972, Ohio is not and was not at the time that the "Objections" were served, a claimant in this proceeding. Copies of these documents are annexed hereto as Exhibits "A", "B" and "C" respectively. As such the court lacks jurisdiction over Ohio to grant the relief requested.

6. Additionally the counterclaims assert causes of action unrelated to the note under which L. J. Rauth as Trustee makes claim. As such they are permissive counterclaims and not compulsory counterclaims. Since the alleged causes of action require a plenary hearing against Ohio, which this Court in Bankruptcy does not have the power to conduct, the Court lacks subject-matter jurisdiction over the "counterclaims".

7. The Trustee has concurrently with the filing of these counterclaims instituted an action against Ohio and others in the Supreme Court of the State of New York, County of New York alleging exactly the same causes of action. Also included as defendants are the individual directors for whose acts Ohio is alleged to be responsible. It would seem that this Court should in the exercise of its discretion dismiss or at least stay the present proceedings pending resolution of that litigation.

8. If this Court determines that it has jurisdiction over Ohio, has subject-matter jurisdiction over the counterclaims and does not dismiss or stay in the exercise

of discretion then Ohio respectfully requests that the Court dismiss the counterclaims under Rule 12(b)(6) on the grounds that the counterclaim fails to state a cause of action upon which relief can be granted.

9. As pointed out above, the counterclaim against Ohio is predicated on the alleged "control" Ohio is alleged to have had over one Richard Mersinger, a director of Airspur.

10. The pleadings clearly refute the position of the Trustee in Bankruptcy that Ohio could in any way have designated or controlled Mersinger in his capacity as a director.

11. Under the "Agreement among Stockholders" a copy of which was attached to the "counterclaim" as Exhibit "A" Mersinger was on the Board of Directors at the time of his alleged designation. Paragraph 7 of this agreement reads:

> "For the purposes of this agreement * * * the following present members of the Board shall have been deemed to have been nominated by the Group B Stockholders and elected by the Stockholders
>
> Group B Stockholders
> Leonard Andrews
> Joe Benning, Jr.
> Richard Mersinger."

As further indicated by both the "Counterclaim" and by the "Agreement" eight companies or corporations constituted the "Group B Stockholders." These stockholders among them held 125,000 shares of Common Stock and an aggregate principal amount of $3,750,000 in 8% notes. Ohio held 3% of these shares (less than 1-1/2% of the total outstanding shares

of common stock) and about 3% of the outstanding indebtedness.

The Agreement further provides that the holders of 50% of the stock of Airspur (Group B Stockholders) may nominate the members of the Board.

12. Clearly nowhere in the "Agreement" or in the "Counterclaim" is there any substantiation for the allegation that Ohio had or could have had control over Mersinger.

13. From other pleadings filed by the Trustee including "Objections" to the claim of Mercantile and in a Complaint served in an action commenced by the Trustee against various defendants in the Supreme Court of the State of New York, County of New York, the Trustee recites that Mersinger was in fact a Vice President of Mercantile. This fact was also admitted by Mersinger on his deposition taken before this Court pursuant to Section 21a of the Bankruptcy Act (11 U.S.C. 44a).

14. Ohio respectfully submits that these facts as adduced from the pleadings and from papers filed by the Trustee Lipper, establish that Ohio cannot be held vicariously liable for any alleged breach of duty by Mersinger any more than it could be held liable for the acts of Benning (a Chemical officer) or Andrews (an officer of the Brokerage that organized the financing), the other Directors nominated by the Group B Stockholders.

15. As such this Court if it retains jurisdiction in the matter, should dismiss the "Cross Complaint"

as to Ohio on the merits and direct Trustee Lipper to discontinue the State Court action against Ohio so as not to further waste and deplete the bankrupt's estate.

WHEREFORE, the claimant, L. J. RAUTH, as subrogee of the Ohio Real Property, Inc. respectfully requests that Claim No. 229 be allowed as a matter of law and that the counterclaims be dismissed together with such other and further relief as to this Court seems just.

John MacCrate III

Sworn to before me this
[illegible] day of November, 1972

Notary Public

SEYMOUR MILLER
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31-[illegible]
Qual. [illegible] County
Commission Expires March 30, 1973

P. 271a

United States District Court

FOR THE
Southern District of New York

In the matter of

Airspur Corporation a/k/a
Airspur New York,

Bankrupt
(Important—Insert name of bankrupt or debtor above)

In Bankruptcy
No. 70-B-577

PROOF OF CLAIM IN BANKRUPTCY

J. R. Tipton (Name of Person Signing Below), of No. 710 Orange Street
in Ashland (City), County of Ashland, State of Ohio Zip Code 44805, says:

1. (a) IF CLAIMANT IS AN INDIVIDUAL, check here ____: That he is the claimant herein.
(b) IF CLAIMANT IS A PARTNERSHIP, check here ____ and complete section (b).
That he is a member of ____ (Partnership Name), a copartnership, composed of the undersigned, and ____ of ____ (City), State of ____, and carrying on business at No. ____ Street, in ____ (City) State of ____.
(c) IF CLAIMANT IS A CORPORATION, check here X and complete section (c).
That the undersigned is the Vice President (Official Title) of Ohio Real Property, Inc. (Corporate Name) a corporation organized under the laws of the State of Ohio, and carrying on business at No. 710 Orange Street, in Ashland (City), State of Ohio, and is duly authorized to make this proof of claim on its behalf.
(d) IF MADE BY AGENT OR ATTORNEY, check here ____ and complete section (d).
That the undersigned is the agent or attorney of ____ (Creditor) of No. ____ Street, in ____ (City) State of ____; that he is duly authorized by the creditor named above to make this proof of claim in his behalf; that said proof cannot be made by the above-named creditor in person because ____

2. That the above-named bankrupt xxxxxxxx was, at the time of the filing of the petition herein, and still is, justly and truly indebted xxxxxxx to the claimant in the sum of (continued on page 2 hereof) xx

3. That the consideration of this debt (or liability) is as follows: ____
(continued on page 2 hereof)

4. That no part of the debt xxxxxxx) has been paid. xxxx

5. That there are no set-offs or counterclaims to the debt xxxxxxxxxxxx

6. That claimant does not hold, and has not had or received, any security for the debt xxxxxxxxx, nor has any person by the claimant's order or knowledge or belief had or received any security for the debt xxxxxxxxx for the claimant's use xxxx

7. [If the debt or liability is founded upon an instrument of writing.] That the instrument upon which the debt xxxxxxxx) is founded is attached hereto xxxxxxxx xxxxxxxxxxx

Proof Of Claim In Bankruptcy

In the matter of	(	
	(	In Bankruptcy
Airspur Corporation a/k/a	(	
Airspur New York,	(	No. 70-B-577
	(	
Bankrupt	(	

2. (continued) One Hundred Fourteen Thousand Seven Hundred Fifty Dollars ($114,750), consisting of One Hundred Twelve Thousand Five Hundred Dollars ($112,500) in principal amount and Two Thousand Two Hundred Fifty Dollars ($2,250) interest due and payable on July 1, 1970, plus interest from and after July 1, 1970 until paid.

3. (continued) the sum of One Hundred Twelve Thousand Five Hundred Dollars ($112,500) paid to the above-named bankrupt by check of Ohio Real Property, Inc., dated April 17, 1969, for Note No. 7 of the $3,750,000 issue of Five Year, Eight Percent Notes of said bankrupt due July 24, 1974, which note is in the principal amount of One Hundred Twelve Thousand Five Hundred Dollars ($112,500). Pursuant to the terms of the Purchase Agreement dated as of July 24, 1969, providing for the issuance of said notes, Bankers Trust Company and Chemical Bank declared the entire principal amount of all of said notes to be due and payable on September 24, 1970. Said declaration was separately addressed and delivered to each of the above-named bankrupt and Jerome Lipper, Esq., as Trustee of said bankrupt. Bankers Trust Company has filed a copy of the said Purchase Agreement with its Proof of Claim in this cause, as Trustee of various trust funds, in respect of $1,875,000 in principal amount of the aforesaid notes, and said Agreement is hereby incorporated herein by this reference.

No. 7 $ 112,500.00

AIRSPUR CORPORATION

New York, New York

FIVE YEAR, EIGHT PER CENT NOTE

DUE July 24, 1974

AIRSPUR CORPORATION, a corporation organized and existing under the laws of the State of Delaware (herein called the "Corporation") for value received hereby promises to pay to

OHIO REAL PROPERTY, INC. or his registered assigns five years from date hereof (unless before that date this note shall have been called for redemption and provision made for the payment of the redemption price hereof) the principal sum of ONE HUNDR. TWELVE THOUS. FIVE HUNDDOLLARS ($112,500.) with interest thereon from the date of issue at the rate of eight per cent (8%) per annum payable at the office of the Corporation, New York, New York in quarterly installments on the first day of January, the first day of April, the first day of July and the first day of October following the date hereof.

This note is one of an authorized issue of five year eight per cent notes of the Corporation limited to the aggregate principal amount of Three Million Seven Hundred and Fifty Thousand Dollars ($3,750,000), all of like tenor except as to denomination.

All of the notes of this issue rank equally and ratably without priority of any of said notes over any others by reason of date or priority in time of the issue or negotiation thereof or otherwise.

This note is not transferable by endorsement or otherwise than by surrender hereof for cancellation and the issue of a new note of like tenor in the name of the transferee and the registration of the transfer upon the books kept by the Corporation for that purpose at its principal office in the City and State of New York; the Company hereby agreeing at any time and from time to time to make transfers of this note as directed by the above named payee and to issue new notes of similar tenor in the aggregate principal amount of the then unpaid principal hereon.

This note is redeemable at any time prior to maturity by the Corporation at its option as a whole or from time to time in part upon at least thirty (30) days notice at the principal amount thereof plus accrued interest to the date fixed for redemption. Such notice to be by mail and to be addressed to the holder thereof at the address as indicated in the books of the Corporation. If this note shall be called for redemption and payment of the redemption price shall be duly provided by the Corporation, interest shall cease to accrue hereon from and after the date for redemption fixed in the notice thereof.

The Corporation will not pay any dividends upon any share of stock of the Corporation, unless all interest due on or prior to the date of the payment of any dividend on the notes of this issue shall have been or be paid in full.

This note is the corporate obligation of the Corporation only and no recourse shall be had for the payment of the principal of this note or the interest hereon, against any present, past or future stockholder, officer or director of the Corporation, either directly or indirectly through the Corporation by virtue of any statute or the enforcement of any assessment or otherwise; all such liability of said stockholders, directors and officers, as such, being released by the registered owner hereof by the acceptance of this note and as part of the consideration of the issue hereof.

The sale or transfer of this Note is subject to the provisions of the Federal Securities Act of 1933, as amended, and to the terms of a Purchase Agreement dated as of July 24, 1969 among Airspur Corporation and certain Purchasers identified therein.

IN WITNESS WHEREOF, AIRSPUR CORPORATION, New York, New York, has caused its corporate seal to be affixed hereto, attested by its secretary or assistant secretary and these presents to be signed in its name by its ~~president~~ Chairman or ~~vice president~~, all as of the 24th day of July, 1969.

AIRSPUR CORPORATION

By: ~~President~~ Chairman

Attest:

B. V. Broadbent

Secretary

AIRSPUR

Corporation

8% Note

$112,500.00

Principal Due

July 24, 1974

INTEREST PAYABLE

January 1st April 1st

July 1st October 1st

FOR VALUE RECEIVED, I/We hereby sell, assigned and transfer unto

.....

.....

Note represented by the within certificate and do hereby irrevocably constitute and appoint

.....

.....

Attorney

to transfer the said Note on the Books of the within named Corporation with full power of substitution in the premises.

Dated ....., 19.....

In presence of:

.....

.....

FORM 170 Printed and for Sale by the St. Louis Printing & Legal Forms Co., St. Lou... CLASS 6

IRREVOCABLE STOCK POWER

For Value Received, Ohio Real Property, Inc.

hereby sell, assign and transfer unto L. J. Rauth, Trustee, under Trust Agreement dated December 27, 1971, by and between said Trustee and Ohio Real Property, Inc., subject to the terms of the notice affixed to the reverse side of Certificate No. 11 herewith,

Three Thousand Seven Hundred Fifty (3,750) Shares of the Common

Capital Stock of the Airspur Corporation

Standing in its name on the books of said Airspur Corporation

represented by Certificate No. 11 herewith

and do hereby irrevocably constitute and appoint

attorney to transfer the said stock on the books of the within named Company with full power of substitution in the premises.

Dated March 24, 1972

R C Coaston Jr.
Robert C Coaston Jr.

In Presence of

Signature guaranteed

SIGNATURE GUARANTEED BY
The Farmers Bank and Trust Co., Ashland, Ohio

By R E Sauder
Cashier - Vice Pres.

CONFIRMATION OF ASSIGNMENT

WHEREAS, on May 14, 1971, the stockholders of Ohio Real Property, Inc., an Ohio corporation (the "Company"), elected to dissolve and completely liquidate the Company, and adopted a Plan Of Dissolution And Complete Liquidation Of The Company (the "Plan"); and

WHEREAS, pursuant to the Plan, the Company sold all of its assets, excepting only cash, accounts and other receivables, claims for tax refunds and certain securities of Airspur Corporation; and

WHEREAS, the Company has distributed to its stockholders, in cash, all or substantially all of the proceeds of the sale of its assets, and will so distribute the balance, if any, thereof, on April 28, 1972; and

WHEREAS, in order to effect and assure the complete liquidation of the Company on or before April 28, 1972, the Company assigned, transferred, set over, conveyed and confirmed unto L. J. Rauth, as Trustee, and his successors in trust, under a certain Trust Agreement dated December 27, 1971, all claims and interests of the Company arising out of or resulting from the following securities of Airspur Corporation, a Delaware corporation, adjudicated bankrupt, in Cause No. 70-B-577, U.S.D.C., S.D.N.Y., and all claims and interests of the Company arising out of or resulting therefrom, to wit: (i) 3,750 shares of $.10 par value Common Stock, represented by Certificate No. 11, for which the Company paid to Airspur Corporation the sum of $37,500 in cash (the "Stock"); and (ii) a Five Year, Eight Per Cent Note Due July 24, 1974, represented by Certificate No. 7, in the principal amount of $112,500, for which the Company paid to Airspur Corporation the sum of $112,500 in cash (the "Note"), which Stock, Note, claims and interests the Company has been informed and has reason to believe are worthless but which the Company deems it inappropriate to abandon during the pendency of the aforesaid proceedings;

NOW, THEREFORE, in consideration of the premises, the Company hereby assigns, transfers, sets over, conveys and confirms unto the aforementioned Trustee, L. J. Rauth, hereby ratifying its prior assignment, transfer, setting over, conveyance and confirmation unto the said Trustee of, the Stock and the Note, and all claims and interest of the Company arising out of or resulting therefrom, including but not limited to the claim filed by the Company in respect of the Note in the aforesaid bankruptcy proceedings on or about March 3, 1971, a copy of which claim is attached hereto, subject, as to the Note, however, to the terms of the legend affixed to the face of the Note if and to the extent applicable in respect of the aforementioned claim filed by the Company in respect of the Note in the aforesaid bankruptcy proceedings as aforesaid, and subject as to the Stock to the Notice affixed on the reverse side of the Certificate representing the same, being Certificate No. 11.

EXHIBIT "B"

TO HAVE AND TO HOLD the Stock and the Note, and all claims and interests of the Company arising out of or resulting therefrom, unto the aforesaid Trustee, his successors and assigns forever.

IN WITNESS WHEREOF, Ohio Real Property, Inc. has caused these presents to be executed and attested by its undersigned officers hereunto duly authorized this _____ day of _____, 1972.

OHIO REAL PROPERTY, INC.

(No Seal)

By _____
President

Attest: _____

L. J. Rauth, Secretary

STATE OF OHIO)
) SS
COUNTY OF ASHLAND)

On this ___ day of _____, 1972, before me appeared _____, to me personally known, who being by me duly sworn did say that he is a _____ president of Ohio Real Property, Inc., a corporation of the State of Ohio, and that the foregoing instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and said _____ acknowledged said instrument to be the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

_____
Notary Public
JEAN ROSS, Notary Public No. 81282
My Commission Expires Aug. 1, 1973

My commission expires: Aug. 1, 1973

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Bankruptcy
No. 70 B 577

IN THE MATTER OF:

NOTICE OF FILING OF ASSIGNMENT OF CLAIM NO. 229

Airspur Corporation a/k/a Airspur New York

Bankrupt

TO: Ohio Real Property
710 Orange Street, Ashland, Ohio 44805

Pursuant to General Order 21, subd. 3 of the General Orders of the Supreme Court of the United States, in Bankruptcy, I hereby advise you that there has been filed in this office an assignment to L.J.Rauth, as trustee, c/o Howard Lutz, Lutz & Oxley, Esqs., 100 W. Main St, Ashland, Ohio 44805, of the claim of Ohio Real Property against Airspur Corporation in the sum of $114,750.00 plus interest, (Cl. # 229,)

If no objections are entered by you on or before the 20th day of April, 19 72, I shall make an order subrogating L.J.Rauth to your rights as original claimant.

DATED: NEW YORK, NEW YORK
April 5, 1972

ROY BABITT

A TRUE COPY
ROY BABITT
REFEREE IN BANKRUPTCY

Referee in Bankruptcy
United States Court House
Foley Square, New York, N.Y.

The assignee herein, L.J. Rauth is hereby subrogated to the rights of the assignor-claimant herein, Ohio Real Property to claim No. 229 in the sum of $114,750.00 plus interest

DATED: NEW YORK, NEW YORK
April 21, 1972

EXHIBIT "C"

Referee in Bankruptcy

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

IN THE MATTER :

OF : No. 70 B 577

AIRSPUR CORPORATION, a/k/a AIRSPUR NEW YORK, : NOTICE OF MOTION

:

Bankrupt.

- x

MAR 2 1973

ROY BABITT

PLEASE TAKE NOTICE that claimant K. R. Cravens Corporation will move before the Honorable Roy Babitt, Referee in Bankruptcy, at the United States Courthouse, Foley Square, New York City, on March 6, 1973, at 10:30 a.m. or at such other time as the Court shall prefer for an order pursuant to Federal Rule of Civil Procedure 12(b)(1), dismissing the "Objection to Claim" filed by Jerome Lipper, Bankruptcy Trustee, in so far as it seeks to obtain an affirmative judgment, on the ground that the bankruptcy court lacks jurisdiction of the subject matter thereof, and in the alternative, on the ground that this is a proper case for this Court to decline to accept jurisdiction and for such other and further relief as the Court may deem just and proper together with the costs and disbursements of this motion.

Dated: New York, New York
February 27, 1973

LOVEJOY, WASSON, LUNDGREN & ASHTON

By _____

Attorneys for K. R. Cravens Corporation
250 Park Avenue
New York, N.Y. 10017
(212) 697-4100

TO: Alex L. Rosen, Esq.
Attorney for Bankruptcy Trustee
225 Broadway
New York, N.Y. 10007

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cc: Messrs. Cravath, Swaine & Moore
Attorneys for Defendant
Chemical Bank
One Chase Manhattan Plaza
New York, N.Y. 10005

Messrs. Bigham, Englar, Jones & Houston
Attorneys for Defendant
Ohio Real Property, Inc.
99 John Street
New York, N.Y. 10038

White & Case
Attorneys for Defendant
Bankers Trust Company
14 Wall Street
New York, N.Y. 10005

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER	:	
OF	:	No. 70 B 577
AIRSPUR CORPORATION, a/k/a AIRSPUR NEW YORK,	:	AFFIDAVIT
Bankrupt.	:	

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DANIEL J. SULLIVAN, being sworn, states:

1. I am an attorney associated with Lovejoy, Wasson, Lundgren & Ashton, attorneys for K. R. Cravens Corporation ("KRC Corp.").

2. I make this affidavit in support of KRC Corp.'s motion to dismiss the "Objection to Claim" filed herein by Jerome Lipper, the Bankruptcy Trustee herein, insofar as it seeks an affirmative judgment against KRC Corp.

3. This case arises out of the sale by International Jetstream Corporation ("IJC") of three jet airplanes to Airspur Corporation ("Airspur"), the bankrupt, a company then in the process of establishing itself as a "short-haul" airline. The planes were sold at a price of $445,000 apiece plus an additional cost for optional equipment, for a total purchase price of $1,395,000. Of this $1,024,231.16 was paid or otherwise set off. The jets were to be modified for Airspur by Northwest Industries

in Alberta, Canada and then sent on to California. Upon information and belief, the three jets were delivered to Northwest Industries for modifications on December 23, 1969 and January 8, and 25, 1970.

4. On February 26, 1970, and after delivery of the planes, the $370,768.84 purchase price balance was assigned by IJC to movant KRC Corp., a corporation which had helped IJC finance its sale of the jets. The balance of the purchase price has never been paid.

5. On June 30, 1972 Airspur filed a petition for an arrangement under Chapter XI of the Bankruptcy Act, and on August 31, 1970 Airspur was adjudicated a bankrupt. Following adjudication the Trustee in Bankruptcy announced that he refused to consider the three jets part of the bankrupt estate. The three jets remain to this day in storage in Canada.

6. On February 26, 1971 KRC Corp. filed a claim against the Bankrupt for $370,768.84. A copy of that claim is annexed hereto as Exhibit A.

7. Sometime after August 28, 1972, the Bankruptcy Trustee sent KRC Corp. a document entitled "Objection to Claim", a copy of which is annexed hereto as Exhibit B. The Trustee's pleading requests that this Court disallow the claim filed by KRC Corp., but it also attempts to allege that KRC Corp. engaged in a scheme to divert Airspur's assets and asks for affirmative damages in the sum of $1,068,500 from KRC Corp.

8. By summons and complaint dated August 7, 1972, the

Bankruptcy Trustee had already commenced a related action in Supreme Court of the State of New York, County of New York. This action named as defendants various persons having some relation to Airspur including William Phelan, both individually and as the executor of the estate of Kenton R. Cravens. Phelan is alleged to be an officer of KRC Corp. and the deceased Cravens is alleged to have been a stockholder and officer of KRC Corp. The Complaint alleges, inter alia, mismanagement of Airspur, and a scheme to divert Airspur's assets. Copies of the summons and complaint (without exhibits) are annexed hereto as Exhibit C.

9. The first cause of action in the Trustee's State Court complaint encompasses all of the grounds set forth in support of his claim against KRC Corp. in this Court. Indeed, except for the variation in the parties, the pleadings are substantially identical. In the State Court various other individuals and business corporations, are claimed by the Bankruptcy Trustee to be jointly liable with Phelan (in his two capacities) for essentially the same damages ($1,116,904 rather than $1,068,500, but the rationale is essentially the same). Thus, the Bankruptcy Trustee is seeking to recover from the two alleged former officers of KRC Corp. in the State Court action, and from KRC Corp. itself before this Court -- all on the same claim.

10. KRC Corp. is not the only entity charged in this Court with the scheme contained in the "Objection to Claim" (exhibit B). Upon information and belief, similar pleadings

have been filed by the Trustee as cross-claims in response to claims filed by Chemical Bank New York Trust Company, Bankers Trust Company, and Ohio Real Property, Inc. Upon information and belief, the affirmative claims against each of these corporations is essentially identical to that asserted by KRC Corp. Each of these three corporations are defendants in the State Court proceeding where the same charges have been lodged against them (see Exhibit C). We understand that each of these corporations have objected to the jurisdiction of this Court, and we ask the court to consider these facts in determining KRC Corp.'s motion.

11. On the basis of the facts stated above it is respectfully requested that the Trustee's request for affirmative judgment against KRC Corp. be dismissed for lack of jurisdiction over the subject matter thereof, and in any event, that the court exercise its discretion in not asserting jurisdiction because of the similar action against other persons and corporations brought by the Bankruptcy Trustee in State Court.

Sworn to before me this
13th day of February, 1973.

Notary Public

GLADYS R. NUTTING
Notary Public, State of New York
No. 41-2919750 - Queens County
Certificate filed in Kings County
Commission Expires March 30, 1973

P. 285a

United States District Court

FOR THE
Southern District of New York

In the matter of

Airspur Corporation a/k/a
Airspur New York,
Bankrupt

(Important—Insert name of bankrupt or debtor above)

In Bankruptcy
No. 70-B-577

PROOF OF CLAIM IN BANKRUPTCY

William J. Phelan (Name of Person Signing Below), of Suite 2300, 7733 Forsyth Boulevard, in Clayton (City), County of St. Louis, State of Missouri, Zip Code 63105, says:

1. (a) IF CLAIMANT IS AN INDIVIDUAL, check here ____: That he is the claimant herein.
   (b) IF CLAIMANT IS A PARTNERSHIP, check here ____ and complete section (b). That he is a member of ____ (Partnership Name), a copartnership, composed of the undersigned, and ____ of ____ (City), State of ____, and carrying on business at No. ____ Street, in ____ (City) State of ____.
   (c) IF CLAIMANT IS A CORPORATION, check here X and complete section (c). That the undersigned is the President (Official Title) of K.R.Cravens Corporation (Corporate Name) (KRCC) a corporation organized under the laws of the State of Missouri, and carrying on business at No. 7733 Forsyth Blvd Street, in Clayton (City), State of Missouri, and is duly authorized to make this proof of claim on its behalf.
   (d) IF MADE BY AGENT OR ATTORNEY, check here ____ and complete section (d). That the undersigned is the agent or attorney of ____ (Creditor) of No. ____ Street, in ____ (City) State of ____; that he is duly authorized by the creditor named above to make this proof of claim in his behalf; that said proof cannot be made by the above-named creditor in person because ____
2. That the above-named bankrupt was, at the time of the filing of the petition herein, and still is, justly and truly indebted to the claimant in the sum of (continued on page 2) dollars
3. That the consideration of this debt is as follows: (continued on page 2)
4. That no part of the debt has been paid except (continued on page 2)
5. That there are no set-offs or counterclaims to the debt except (continued on page 2)
6. That claimant does not hold, and has not had or received, any security for the debt, nor has any person by the claimant's order or knowledge or belief had or received any security for the debt for the claimant's use
7. [illegible]
8. [If the debt is founded upon an open account.] That the said debt was due on February 24, 1970; that no note, or other negotiable instrument, has been received for such account or any part thereof; and that no judgment has been rendered thereon.
9. This claim is filed as an (UNSECURED) CLAIM. $370,768.84 Total Amount Claimed

Dated St. Louis, Missouri, this 26th day of February 1971

Signed [signature] William J. Phelan (Name of individual, agent, officer, or partner signing this claim)

NOTE: Failure to complete all necessary parts of this form may result in disallowance.
PENALTY FOR PRESENTING FRAUDULENT CLAIM—Fine of not more than $5,000 or imprisonment for not more than five years or both—Title 18, U.S.C., Sec. 152.

(When Signed Mail this Proof of Claim to Referee in Bankruptcy)

Proof Of Claim In Bankruptcy

In the matter of

Airspur Corporation a/k/a
Airspur New York,

Bankrupt

(In Bankruptcy
(No. 70-B-577

2. Three Hundred Seventy Thousand Seven Hundred Sixty-Eight Dollars and Eighty-Four Cents ($370,768.84).

3. A credit to the debt of International Jetstream Corporation, a Missouri corporation (IJC), to KRCC in the amount of $370,768.84, for which the open account receiveable of the above-named bankrupt in such amount, due to IJC for the consideration set forth in the attached Assignment And Acceptance Of Assignment, was assigned to KRCC.

4. (continued) as set forth in the attached Assignment And Acceptance Of Assignment, to which payments effect was given by IJC prior to such assignment, so that the debt justly and truly owing by the above-named bankrupt to KRCC is $370,768.84.

5. (continued) as set forth in the attached Assignment And Acceptance of Assignment, to which effect was given by IJC prior to such assignment, so that the debt justly and truly owing by the above-named bankrupt to KRCC is $370,768.84.



For Exhibits B and C to this document see pp. 142a-149a and pp. 188a-211a of this Appendix. It has not been reproduced here in the interest of brevity and non-duplication.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X
IN THE MATTER

OF

AIRSPUR CORPORATION a/k/a
AIRSPUR NEW YORK,

BANKRUPT.
----------X

No. 70 B 577

IN OPPOSITION

MAR 28 1973

STATE OF NEW YORK)
SS:
COUNTY OF NEW YORK)

ALEX L. ROSEN, alleges that he is the attorney for JEROME LIPPER trustee of the above bankrupt.

That your deponent is submitting this answer on behalf of Jerome Lipper Trustee-Respondent, in opposition to the motions of:

1. The Chemical Bank New York Trust Company, Commingled Employee Benefit Special Fund (hereinafter designated as "Chemical");

2. Bankers Trust Company, as Trustee of various trust funds (hereinafter designated as "Bankers");

3. Ohio Real Property Inc. (hereinafter designated as "Ohio");

4. Mercantile Commerce Co. (hereinafter designated as "Mercantile");

5. K. R. Cravens Corporation (hereinafter designated as "Cravens")

to dismiss the objections to said claims filed by JEROME LIPPER, bankruptcy trustee, and for an order pursuant to Rule 12(b)(1) or 12(b)(2) or 12(b)(6) and Rule 56 of the Federal Rules of Civil Procedure to dismiss the offsets, cross-claims, and requests for affirmative judgments inter-

posed by said trustee, as stated in the respective objections aforementioned.

Rather than repeat the facts and arguments outlined in Respondent's Memorandum of Law, respondent respectfully refers to and incoprates the facts therein stated as if same were specificaly alleged herein.

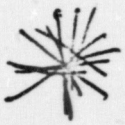
Deponent further attaches hereto the Purchase Agreement and the Stockholders Agreement which are pertinent to the facts and issues before this Court.

Based on the facts and issues raised by respondent or the objections of the trustee, the claimants motions should be denied in all respects or the Court should hold a hearing on the facts and issues of jurisdiction and on the merits.

Dated: New York, New York

March 26, 1973.

ALEX L. ROSEN
Attorney for Trustee-
Respondent
225 Broadway
New York, New York 10007
(212) 227-1787



For Exhibits to this document see pp. 5a-41a and pp. 74a-80a of this Appendix. It has not been reproduced here in the interest of brevity and non-duplication.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
DEC 8 1972

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IN THE MATTER OF

AIRSPUR CORPORATION, a/k/a AIRSPUR NEW YORK,

Bankrupt.

----------X

No. 70 B 577

ROY BABITT REFEREE IN BANKR.

NOTICE OF MOTION AND MOTION TO AMEND OBJECTION TO CLAIM AND OFFSETS, CROSS-CLAIMS AND REQUEST FOR AFFIRMATIVE JUDGMENT

PLEASE TAKE NOTICE, that upon the application of Jerome Lippe Trustee in Bankruptcy of Airspur Corporation, a/k/a Airspur New York, by Alex L. Rosen, his attorney, and the exhibits thereto attached, a motion will be made before the Honorable Roy Babitt, Referee in Bankruptcy, at the United States Court House, Foley Square, New York, New York on December 18th, 1972, at 10:00 A. M., or as soon thereafter as counsel may be heard, for the following relief:

1. To have the Court rule that in the Trustee's Objections to Claim No. 46 and Claim No. 153 wherever the names or designations of BANKERS TRUST COMPANY and/or CHEMICAL BANK appear, it shall be deemed that the names and designations therein shall be BANKERS TRUST COMPANY AS TRUSTEE OF VARIOUS TRUST FUNDS and CHEMICAL BANK AS TRUSTEE OF THE CHEMICAL BANK NEW YORK TRUST COMPANY COMMINGLED EMPLOYEE BENEFIT SPECIAL FUND, or in the alternative that the Court grant leave to the Trustee to amend his objections to that effect, and to grant the petitioner such other relief as in the premises the Court deems just and proper.

Dated: New York, New York
December 7th, 1972

SIGNED ENDORSED
12/18/72

13

Alex L. Rosen
Attorney for Trustee
225 Broadway
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

IN THE MATTER

OF

AIRSPUR CORPORATION, a/k/a AIRSPUR NEW YORK,

Bankrupt.

No. 70 B 577

APPLICATION

----------X

JEROME LIPPER, as Trustee of Airspur Corporation, hereinafter designated as "Airspur", by Alex L. Rosen, his attorney, alleges as follows:

1. Upon information and belief, at all times hereinafter mentioned, Airspur was a corporation duly organized on November 18, 1968, under the laws of the State of Delaware, with its principal place of business at 10 Rockefeller Plaza, New York, New York.

2. On July 15, 1969, Airspur filed a certificate of doing business under the laws of the State of New York.

3. Upon information and belief, Airspur was formed among other purposes, to engage in the business of conducting a commercial airline servicing the public by means of short hops between airports in the same, or in different cities.

4. Upon information and belief, directors' meetings of Airspur were held, and its principal books and records were kept at its main office at 10 Rockefeller Plaza, New York, New York.

5. On June 30, 1970, Airspur filed a petition in the United States District Court for the Southern District of

New York, which commenced proceedings under Chapter XI of the Bankruptcy Act. These proceedings were aborted, and Airspur was adjudicated a bankrupt on August 31, 1970. Thereafter, the said United States Court assumed exclusive jurisdiction over Airspur and over all its property and assets wherever located and now has such jurisdiction.

6. Petitioner herein was duly appointed Trustee in bankruptcy of Airspur on August 31, 1970, and has since been acting as such.

7. Applicant respectfully refers this Court to the Objection to Claim, Offsets, Cross Claims, and Request for Affirmative Judgment dated August 17, 1972, copies of which the claimants Bankers Trust Company as Trustee for various Trust Funds (hereinafter referred to as Bankers) and Chemical Bank as Trustee for Chemical Bank New York Trust Company Commingled Employee Benefit Special Fund (hereinafter referred to as Chemical) were served with and which are on file in this Court, and requests that same be deemed as if attached to this application herein.

8. That the trustee herein objected to claim number 153 filed by Chemical Bank in the sum of $375,000 and claim number 46 filed by Bankers in the sum of $1,875,000. That in fact said claim number 153 was filed by Chemical Bank as Trustee for Chemical Bank New York Trust Company, and claim number 46 was filed by Bankers Trust Company as Trustee for Various Trust Funds.

9. In the body of the objections, objectant refers both to the claimants and Chemical and Bankers in their respective capacities.

10. That although the objections clearly show the specific claim numbers that were objected to and the amount, and the balance of the objection discloses that the party intended to be objected to was Chemical Bank as Trustee for Chemical Bank New York Trust Company Commingled Employee Benefit Special Fund and Bankers Trust Company as Trustee for Various Trust Funds, it would be better to clearly clarify the objection to the claims that same refers only to Chemical Bank New York Trust Company Commingled Employee Benefit Special Fund on claim number 153, and Bankers Trust Company as Trustee for Various Trust Funds on claim number 46. It would have been better pleading in the initial paragraph and paragraph number 2 on the objection to claim number 153, not to have used the name Chemical Bank but to have used the designation Chemical Bank New York Trust Company Commingled Employee Benefit Special Fund, and in the initial paragraph and paragraph number 3 on the objection to claim number 46, not to have used the name Bankers Trust but to have used the designation Bankers Trust Company as Trustee for Various Trust Funds.

11. That a reading of the objections hereinbefore referred to and filed in this court, in substance disclose on their face both as to Chemical and Bankers, that the objections were intended against the claims and against the parties who filed said claims, more particularly Chemical Bank as Trustee for Chemical Bank New York Trust Company Commingled Employee Benefit Special Fund, and Bankers Trust Company as Trustee for Various Trust Funds.

12. In order to obviate any dispute or possible issue arising, applicant respectfully requests that the objections

hereinbefore referred to be deemed as against Chemical Bank as Trustee for Chemical Bank New York Trust Company Commingled Employee Benefit Special Fund, and Bankers Trust Company as Trustee for Various Trust Funds respectively, or in the alternative that where the name Chemical Bank appears for claim number 153 in the objection, same be deemed to be the Chemical Bank as Trustee for Chemical Bank New York Trust Company Commingled Employee Benefit Special Fund, and where the name Bankers Trust appears for claim number 46 in the objection,. same be deemed to be the Bankers Trust Company as Trustee for Various Trust Funds, or in the alternative that the trustee in bankruptcy be granted leave to amend the objections accordingly.

13. No previous application for this or similar relief has heretofore been made.

WHEREFORE applicant respectfully requests this honorable Court grant the relief herein requested.

Dated: New York, New York
December 7, 1972.

JEROME LIPPER TRUSTEE

By _____

Alex L. Rosen
Attorney for Trustee
225 Broadway
New York, N.Y. 10007

STATE OF NEW YORK)
) ss. :
COUNTY OF NEW YORK)

Erwin Smith being duly sworn, deposes and says:

That deponent is not a party to the action; is over 18 years of age and resides at New York, New York.

That on the 7th day of December, 1972, deponent served the within NOTICE OF MOTION upon the following at their respective addresses by depositing same enclosed in a postpaid, properly addressed wrapper, by ~~certified~~ mail, in an official depository under the exclusive custody of the United States Postal Service within the State of New York:

(1) Peter Collins, Esq.
White and Case
14 Wall Street
New York, New York

(2) Philip Berelson, Esq.
Cravath, Swaine and Moore
1 Chase Manhattan Plaza
New York, New York

Erwin Smith

Sworn to before me this
7th day of December, 1972.

Doris Guelmo
Notary Public

DORIS GUELMO
NOTARY PUBLIC, STATE OF NEW YORK
No. 24-6544825
Qualified in Kings County
Cert. filed in New York County
Commission Expires March 30, 197[illegible]

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DEC 1 197

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF	Index No. 70 B 577
AIRSPUR CORPORATION, a/k/a, AIRSPUR NEW YORK, Bankrupt.	AFFIDAVIT OF P.B. KONRAD KNAKE

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

P. B. KONRAD KNAKE, being duly sworn says:

1. I am a member of the Bar of this Court and of the firm of White & Case, attorneys for Bankers Trust Company ("Bankers"), which, as Trustee of Various Trust Funds, filed Claim No. 46 herein on September 17, 1970.

2. Bankers has been served with an "Objection to Claim and Offsets, Cross-Claims and Request for Affirmative Judgment," a copy of which is annexed as Exhibit A hereto. In that objection, Jerome Lipper, the Trustee herein, claims and moves for affirmative judgment "against the said claimant" in the amount of $6,208,904.00

3. On November 20, 1972 Bankers, as Trustee, served and filed a motion, returnable December 5, 1972, for dismissal of the Trustee's counterclaim. A copy of the Notice of Motion and the Affidavit of A.A.T. Wickersham in support thereof are together annexed as Exhibit B hereto. The grounds of such motion are twofold: first, that this Court lacks jurisdiction of the subject matter of the Trustee's counterclaim and second, that such counterclaim, which seeks to assert a claim in tort

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against a fiduciary, must for that reason be directed against Bankers as an individual, in which capacity it is not before this Court. At the request of counsel for the Trustee in Bankruptcy, such motion has been adjourned to January 9, 1973 at 1:30 P.M.

4. Counsel for the Trustee in Bankruptcy has served on December 7, 1972 a Notice of Motion and affidavit in support of a motion to amend his objection and counterclaim. The relief requested by such motion is that, wherever the names Bankers Trust Company and/or Chemical Bank appear in the respective objections to their claims, it be deemed that such names respectively shall be Bankers Trust Company as Trustee of Various Trust Funds and Chemical Bank as Trustee of the Chemical Bank New York Trust Company Commingled Employee Benefit Special Fund. Alternatively, leave so to amend the objections is sought. The motion has been made returnable on December 18, 1972.

5. The motion of the Trustee in Bankruptcy anticipates the issues brought before this Court by the previously served and filed motion of Bankers, which has been adjourned to January 9, 1973 at his request.

6. It is submitted that this Court should not permit the amendment of the counterclaim until Bankers has been heard on its motion. Mechanical amendment of the Trustee's counterclaim would be an idle gesture, for, as is argued in Bankers' papers in support of its motion, Bankers, like any other fiduciary, may not be the object of a claim in tort "as trustee" but only in its individual capacity. Yet Bankers is not before this Court in its individual capacity, but as a trustee. It is

submitted that the presence of Bankers before this Court only in its capacity as trustee is a fact which negates the very jurisdiction of this Court to entertain the counterclaim, and not a mere technicality which can be cured by a request to the Court to "deem" the counterclaim asserted against Bankers in one capacity to have been asserted against it in another.

7. The power of this Court to entertain the counterclaim against Bankers in its individual capacity is but one of several questions of jurisdiction pointed out in Bankers' moving papers and should be considered in conjunction with them.

8. For the aforementioned reasons this Court is respectfully requested to deny the motion of the Trustee in Bankruptcy for amendment of his counterclaim against Bankers, or in the alternative to order adjournment of such motion to January 9, 1973 at 1:30 P.M., the adjourned date of Bankers' pending motion.

Sworn to before me this
15th day of December, 1972.

Notary Public

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

IN THE MATTER

OF

AIRSPUR CORPORATION a/k/a
AIRSPUR NEW YORK

BANKRUPT
----------X

No. 70 B 577

ORDER
AMENDING
OBJECTIONS

JAN 5 1973

ROY BA... IN

At New York in said District on the 2nd day of January, 1973.

Jerome Lipper Trustee, by Alex L. Rosen his attorney, having applied to this court for an order to amend the trustee's objections by way of offsets, cross claim and for affirmative judgment, to the claims filed of Bankers Trust Company as Trustee of Various Trust Funds, and Chemical Bank as Trustee of the Chemical Bank New York Trust Company Commingled Employee Benefit Special Fund, so that the same shall specifically designate BANKERS TRUST COMPANY AS TRUSTEE OF VARIOUS TRUST FUNDS and CHEMICAL BANK AS TRUSTEE OF THE CHEMICAL BANK NEW YORK TRUST COMPANY COMMINGLED EMPLOYEE BENEFIT SPECIAL FUND as the parties against whom said objections, cross claims, offsets, counterclaims and demand for affirmative judgment are being made, and said application having come on to be heard before this Court on December 18, 1972, and due notice of said application having been given, and Alex L. Rosen, attorney for the trustee, having appeared for the application, and Peter Collins of White and Case attorneys for Bankers Trust Company as Trustee of Various Trust Funds, and Philip Berelson of Cravath, Swaine and

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Moore attorneys for Chemical Bank as Trustee of the Chemical Bank New York Trust Company Commingled Employee Benefit Special Fund having appeared in opposition,

NOW upon the application of Jerome Lipper trustee of the above bankrupt dated December 7, 1972, and the affidavit of Philip P. Berelson of Cravath, Swaine and Moore attorneys for Chemical Bank as Trustee of the Chemical Bank New York Trust Company Commingled Employee Benefit Special Fund, and after due deliberation, it is

ORDERED that the application of Jerome Lipper be and the same is hereby granted, subject however that the granting of such application to amend the objections shall not be deemed as a general appearance by Bankers Trust Company as Trustee of Various Trust Funds, and Chemical Bank as Trustee of the Chemical Bank New York Trust Company Commingled Employee Benefit Special Fund, or as a consent to the jurisdiction of this Court, which issue may be raised by Bankers Trust Company as Trustee of Various Trust Funds, and Chemical Bank as Trustee of the Chemical Bank New York Trust Company Commingled Employee Benefit Special Fund in accordance with provisions of the Bankruptcy Act and which is subject to future determination by this court.

Referee in Bankruptcy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

IN THE MATTER

OF

AIRSPUR CORPORATION, a/k/a
AIRSPUR NEW YORK,

Bankrupt.
----------X

No. 70 B 577

AFFIDAVIT

STATE OF NEW YORK)
) ss. :
COUNTY OF NEW YORK)

Erwin Smith, being duly sworn, deposes and says:

That he is not a party to the action; is over 18 years of age and resides at New York, New York.

That on the 4th day of January, 1973, deponent served a copy of the within ORDER AMENDING OBJECTIONS upon the claimants through their attorneys whose names and addresses appear below, at their respective addresses, by depositing same enclosed in separate, postpaid, properly addressed wrappers, by mail, in an official depository under the exclusive custody of the United States Postal Service within the City and State of New York.

Peter Collins, Esq.
White & Case
14 Wall Street
New York, N. Y. 10005, Attorneys for Bankers Trust,

and

Philip Berelson, Esq.
Cravath, Swaine & Moore
1 Chase Manhattan Plaza
New York 10005, Attorneys for Chemical Bank.

Erwin Smith

Sworn to before me this
4th day of January, 1973

Notary Public

[illegible] New York
[illegible] County
Certificate [illegible] County
Commission [illegible] 1974

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter :

of :

AIRSPUR CORPORATION, a/k/a AIRSPUR NEW YORK, :

Bankrupt. :

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70 B 577

OPINION

FILED
AUG 29 1974
ROY BABITT
BANKRUPTCY JUDGE

APPEARANCES:

ALEX L. ROSEN, ESQ.,
Attorney for Trustee Jerome Lipper
225 Broadway
New York, New York

CRAVATH, SWAINE & MOORE, ESQS.,
Attorneys for Chemical Bank as Trustee, etc.
One Chase Manhattan Plaza
By: RALPH L. McAFEE and
PHILIP P. BERELSON, Esqs. Of Counsel

COWAN, LIEBOWITZ & LATMAN, ESQS.,
Attorneys for Mercantile Commerce Co.
200 East 42nd Street
New York, New York
By: LEWIS R. COWAN and
MARTIN J. BLUESTEIN, Esqs. Of Counsel

WHITE & CASE, ESQS.,
Attorneys for Bankers Trust Co. as Trustee, etc.
14 Wall Street
New York, New York
By: P. B. KONRAD KNAKE and
PETER M. COLLINS, ESQS., Of Counsel

APPEARANCES (continued):

LOVEJOY, WASSON, LUNDGREN & ASHTOWN, ESQS.,
Attorneys for K. R. Cravens Corp.
250 Park Avenue
New York, New York
By: DANIEL J. SULLIVAN, Esq., of Counsel

BIGHAM ENGLAR JONES, & HOUSTON, ESQS.,
Attorneys for Ohio Real Property Inc.
99 John Street
New York, New York
By: JOHN MacCRATE III, Esq., Of Counsel

ROY BABITT, Bankruptcy Judge:

On June 30, 1970, Airspur Corporation ("Airspur"), a Delaware corporation, filed with this court its petition seeking an arrangement under the statutory scheme of Chapter XI of the Bankruptcy Act, Sections 301 et seq., 11 U.S.C. §§ 701 et seq. The Chapter XI proceedings were soon aborted and Airspur was adjudged a bankrupt. The trustee in bankruptcy qualified and has been administering the estate. Following the adjudication of bankruptcy, timely claims against the estate were filed by various creditors under Section 57n of the Act, 11 U.S. C. § 93n.[1/] The trustee, discharging the duty placed on

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1/ These creditors are Bankers Trust Company as trustee ("Bankers"), Chemical Bank as trustee ("Chemical"), Ohio Real Property, Inc. ("Ohio"), Mercantile Commercial Company ("Mercantile"), and K. R. Cravens Corporation ("Cravens") (hereinafter styled collectively as "Claimants.").

trustees by, inter alia, Section 47a(8) of the Act, 11 U.S.C. § 75a(8), filed objections to the claims and sought affirmative money judgments bottomed on counterclaims asserted in the objections to the claims. Defending against the counterclaims, the claimants, relying on Section 23 of the Bankruptcy Act, 11 U.S.C. § 46, all raised issue as to the exercise of this court's summary jurisdiction over the counterclaims.[2/] The threshhold issue to be decided, therefore, is that raised by the objections to the exercise of this court's summary jurisdiction, i.e., whether this court is to overrule the objections and pass to the merits of the trustee's counterclaims or sustain the objections and thereby require the trustee to seek relief in a plenary suit brought in a court of appropriate jurisdiction.

2/ The trustee does not suggest that the manner in which the issue of summary jurisdiction was raised is improper. Nor could he under the last sentence of Section 2a(7) of the Act, 11 U.S.C. § 11a(7), Cline v. Kaplan, 323 U.S. 97 (1944). As this controversy arises in a case in this court before the October 1, 1973 effective date of the new Bankruptcy Rules, 411 U.S. 991, et seq., Rule 915 of those Rules has no effect. In any event, the issue having been raised properly, Rule 915 would be of no effect even if it were applicable.

While we may not end with the words of the statute, in this case Section 23a of the Act, we certainly begin there. F.T.C. v. Bunte Bros., 312 U.S. 349, 350 (1941). Accordingly Section 23a must be set forth. It reads as follows:

> "The United States district courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings under this Act, between receivers and trustees as such and adverse claimants, concerning the property acquired or claimed by the receivers or trustees, in the same manner and to the same extent as though such proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants."

But if any provision of the Bankruptcy Act has developed more than its share of judicial gloss on the words that Congress wrote, Section 23a is that provision.

That this is an adverse party proceeding is not disputed; the court could, therefore, take jurisdiction of the counterclaim only if the bar to that jurisdiction had been waived by consent of the claimants.[3/] Manifestly, the pleadings preclude a finding of consent to this court's

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3/ Section 23b of the Act, 11 U.S.C. § 46b, reads as follows:

> "Suits by the receiver and the trustee shall be brought or prosecuted only in the courts where the bankrupt might have brought or prosecuted them if proceedings under this title had not been instituted unless by consent of the defendant. . . ." (emphasis supplied).

summary jurisdiction. Hence, unless the claimants may be held to have consented by implication, this court lacks jurisdiction of the subject matter and the trustee must pursue his counterclaims elsewhere. And so I turn to the pivotal issue of implied consent based on the facts set forth in the pleadings.

It is well settled that the claimants, by filing their proofs of claim, conferred upon this court the power to adjudicate the merits of all counterclaims arising out of the subject matter of those claims, i.e., the transaction or occurrence, forming the basis of the original claims. Alexander v. Hillman, 296 U.S. 222 (1935); Chase National Bank of the City of New York v. Lyford, 147 F.2d 273 (2d Cir. 1945); In re Majestic Radio and Television Corporation, 227 F.2d 152 (7th Cir. 1955); Columbia Foundry Co. v. Lochner, 221 F.2d 382 (10th Cir. 1955); Florance v. Kresge, 93 F.2d 784 (4th Cir. 1938). It is thus necessary to appraise the underlying bases for the claims and appraise them in light of the bottoming of the counterclaims in order to decide whether the claims and the counterclaims do indeed arise out of the

same transaction or occurrence. Cline v. Kaplan, 323 U.S. 97 (1944).

Though the sometimes convoluted maneuverings of many of the players in the Airspur drama created on intricate corporate and financial pattern, the facts controlling disposition of the threshhold dispute of subject matter jurisdiction are susceptible of forthright presentation.

In November of 1968, Warren E. Kraemer and B. V. Brooks, formed Airspur Corporation, the purpose of which was apparently to engage, as a business enterprise, in a short-haul airline service. Subsequently, Brooks and Kraemer, as Class A shareholders of this company, together with the claimants and certain others not parties to this proceeding, entered into a purchase agreement and an agreement among stockholders, both dated July 24, 1969. By the terms of these agreements the claimants and their co-venturers, as Class B shareholders, purchased shares of the common stock and the notes of Airspur and received, along with the ownership of fifty per cent of Airspur's common stock, the right to approve or ratify any contract or act submitted to the shareholders

by Airspur's Board of Directors, half of whom were nominees of claimants Bankers, Chemical, and Mercantile. In short, the management of Airspur was shared equally by the claimants as Class B shareholders and by Brooks and Kraemer, as Class A shareholders. In addition, the Class B shareholders were given final right of approval of the contracts and actions of Airspur's Board.

Despite the hoped for managerial expertise thus made available to Airspur, it managed, within the next year, to dissipate assets of $6,000,000.00. Among the transactions instrumental in Airspur's ultimate financial demise were:

a) the purchase for $3,500,000 of a moribund Caribbean airline in time to do little more than preside over its interment;

b) an unsecured loan of $1,000,000 to the financially unsound International Jetstream Corporation ("IJC") (of which K. R. Cravens, deceased, an active promoter of the formation of Airspur, was a director);

c) the purchase from IJC of three Jetstream Aircraft for an additional total of $1,395,000; and

d) the deposit of $92,000 with the Handley Page Company of England ("Handley").

Warren Kraemer himself operated an agency in the United States for Handley, a company which had twice been in bankruptcy.

Following this curious sequence of business judgments, Airspur, not surprisingly, filed for its Chapter XI relief, only to be quickly adjudged a bankrupt as already noted. The claims filed by Bankers, Chemical, Mercantile, and Ohio were in amounts generally representing the principal amount together with unpaid interest allegedly owed by Airspur as evidenced by the notes these claimants purchased under the agreements of July 24, 1969. The Cravens Corporation filed its claim for the unpaid balance of the purchase price owed by Airspur to IJC and which IJC had assigned to the Cravens Corporation. While objecting to these claims, the trustee counterclaimed, alleging fraud, mismanagement, and negligence

in the operation of Airspur and sought affirmative judgment against the claimants, jointly and severally, in the amount of $6,208,904.

That the management of Airspur was inept is patent. Whether it was culpably negligent or fraudulent must be determined upon the merits. The ability of this court to make that determination will depend on whether I first find that the purchase of the notes forming the bases of the claims of Bankers, Chemical, Mercantile, and Ohio and the assignment by IJC to the Cravens Corporation of the unpaid balance of the purchase price of the three Jetstream aircraft upon which Cravens grounds it claim arise from the same transaction or occurrence as that upon which the trustee asserts his counterclaims.

I hold that the trustee's counterclaims do arise out of the same transaction, that they are thus compulsory and properly asserted in his objections to the claims with the result that this court concludes that it has jurisdiction to pass upon the merits of the claims as well as the trustee's counterclaims.

The word "transaction" must not be construed so narrowly as to signify only a single isolated event. Rather, "'transaction" is a word of flexible meaning; it may comprehend a series of many occurrences, depending not so much upon the immediateness of their connection as upon their logical relationship." Moore v. New York Cotton Exchange, 270 U.S. 593, 610 (1926). That logical relationship is the consistent thread which interweaves the facts outlined above.

Because the Cravens claim is based upon a transaction distinct from those arising under the agreements of July 24, 1969, and because it is susceptible of swift disposition here, I shall deal with that claim separately. In discussing it, I must mention some additional facts: Kenton R. Cravens, deceased, in addition to being a moving force in the formation of Airspur, was also a director, stockholder, and officer of K. R. Cravens, Inc., of International Jetstream Corp., and of Ohio Real Property, Inc. He assisted in the acquisition of the necessary financing for Airspur. Later when purchasing airplanes, Airspur turned to IJC for the purchase of three Jetstream aircraft,

none of which it ever received, owing to, among other things, the financial difficulties of IJC.

It is worth mentioning again that, prior to the purchase of the planes, Airspur had loaned to IJC, apparently without investigation, a total of $1,006,850, all unsecured. In return for its purchase of the aircraft, to which it never secured title and of which it never gained possession, Airspur cancelled the notes of IJC evidencing the unsecured loan referred to.

K. R. Cravens, Inc., to whom the unpaid balance of the purchase price of the aircraft was assigned by IJC, now maintains that the claim for that unpaid balance does not arise from the same transaction--from the same series of logically interrelated facts--as those advanced by the trustee in support of his assertion of culpable negligence, fraud, and mismanagement. I find otherwise; the Cravens claim is based upon a series of exchanges in which Airspur and one of its eminences grises, Cravens, were active participants. The trustee asserts that the transactions in which Airspur participated were negligently or fraudulently conceived,

entered into, and consummated. It is clear to me that the Cravens claim and the trustee's counterclaim to it, are based on a common denominator and fall within the purview of Rule 13(a) of the Federal Rules of Civil Procedure. That Rule requires a broad, realistic interpretation. United Artists Corp. v. Masterpiece Productions, Inc., 221 F.2d 213 (2d Cir. 1955); United States v. Hayward-Robinson Company, 430 F.2d 1077 (2d Cir. 1970). See also 3 Moore's Federal Practice ¶13.13. Accordingly, I find and conclude that this court has jurisdiction to hear the merits of the counterclaim asserted by the trustee to the Cravens claims. The Cravens objection to jurisdiction by this court under Section 23 of the Act is overruled.

Turning to the other claims filed against Airspur's assets I find and conclude that the trustee's counterclaims and requests for affirmative judgment are cognizable within this court's jurisdiction under Section 23 of the Act and Rule 13(a) of the Federal Rules of Civil Procedure.

Claimants Bankers, Chemical, Mercantile, and Ohio all assert that they are before this court on claims grounded

solely on the fact that they are holders of Airspur's notes; they urge, in effect, that the trustee's allegations of mismanagement and fraud do not arise out of the transaction that made them noteholders and therefore creditors. The facts, however, support just the opposite conclusion. By entering into the agreements of July 24, 1969 the claimants became far more than mere creditors of Airspur; they became, as set forth above, its owners and managers of its business affairs as well. Chemical, in its memorandum in support of its motion to dismiss the counterclaims, contends that the stockholder agreement imposed no duty upon the parties with respect to the management of Airspur; yet paragraph 7 of the agreement gave the Class B shareholders the power to designate half of the directors of Airspur. In effect, they became co-managers of the corporation.[4/] Moreover, the agreement also gave the Class B shareholders the right to

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4/ The agreement provided that "the group A stockholders and the group B stockholders share equally in the management of Airspur and the control of its policy. . . ."

give their seal of benediction to all of the contracts and other actions entered into or taken by the directors. Chemical insists that the agreement among stockholders was "clearly for the benefit of the shareholders to protect them against the corporation." But, Chemical and the others, it appears, sought all the benefits of managerial authority with none of the concomitant responsibilities imposed by that status. To say that the Class B shareholders entered into the agreement solely to exercise controls over Airspur and then to contend that, having been granted those controls, those shareholders were not p rties to Airspur's parlous and ill-fated business transactions is fatuous. With authority must go responsibility, and the claimants cannot grasp the benefits of the former and simultaneously reject the burdens of the latter. By entering into the agreements the claimants became significant forces in the management of Airspur; and, as such, they are properly here for disposition by this court of the trustee's counterclaims. Cf. Alexander v. Hillman, supra; Columbia Foundry Co. v. Lochner, supra; Chase National Bank v. Lyford, supra.

Claimants' objections to this court's jurisdiction are overruled for I find and conclude that I have jurisdiction over the merits of all claims, counterclaims, and requests for affirmative judgment. Any other result would permit multiplicity of suit at additional expense to the other creditors, and permit delay of administration as a reward to the claimants for the course of their dealings with this company and its financial affairs.

Trial will proceed on dates to be fixed by the court following pre-trial conference in my chambers with all litigants present on Friday, October 25, 1974, at 10 A.M. Prior thereto, answers are to be filed and served on or before October 4, 1974, in those instances where such pleading was not filed. Pre-trial discovery is to be completed by October 21, 1974.

It is so ordered.

Dated: New York, New York
August 29, 1974

ROY BABITT
Bankruptcy Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of

AIRSPUR CORPORATION, a/k/a AIRSPUR NEW YORK,

Bankrupt.

70 B 577

MEMORANDUM

TENNEY, J.

Pending before this Court are appeals by four claimants to the estate of Airspur Corporation ("Airspur"), bankrupt, from an unreported decision of the Bankruptcy Court, dated August 29, 1974, denying claimants' motions to dismiss certain counterclaims asserted against them by Jerome Lipper, Trustee of the bankrupt estate. For the reasons stated infra, the order is reversed and the matter is remanded for further proceedings consistent with this opinion.

Facts

Airspur was incorporated in November 1968 for the apparent purpose of engaging in the business of conducting a short-haul airline service. On July 24, 1969, the original stockholders entered into a Purchase Agreement with claimants and others,[1] not parties hereto (referred to collectively in the Purchase Agreement as "Purchasers"), under which the latter group agreed to pur-

chase an aggregate of $3,750,000 principal amount of Airspur five-year 8% notes and an aggregate of 125,000 shares of Airspur common stock. Section 4.06 of the Purchase Agreement provided that as a condition precedent, the contracting parties would also execute a Stockholders' Agreement, incorporated by reference into the Purchase Agreement.

The Stockholders' Agreement, also executed on July 24, 1969, was apparently drafted in part so that the Purchasers could "impose certain controls over Airspur as a condition to their investment in Airspur through the purchase of [Airspur notes and common stock]." Thus, the Stockholders' Agreement provided, inter alia, that Airspur's then present stockholders (designated as Group A Stockholders) and the Purchasers (designated as Group B Stockholders) would share control over the make-up of the Airspur Board of Directors. Specifically, Paragraph 1(c) of the Stockholders' Agreement directed that:

> "At each annual meeting of stockholders of Airspur, (i) the Group A Stockholders shall have the right to nominate three of the directors ... to be elected at such meeting; (ii) the majority of the shares of the Group B Stock held by Group B Stockholders who are also Noteholders shall have the right to nominate three of the directors ... to be elected at such meeting; and (iii) the Stockholders shall vote all shares of Common Stock owned or held by them in favor of the election of such six nominees."

Paragraph 1(a) of the Stockholders' Agreement also provided that:

> "Unless the prior written consent of at least a majority of the shares of the Group B Stockholders who are also Noteholders at the time outstanding

> shall have been obtained by Airspur, the Stockholders shall vote whether directly or by written consent all of the shares of Common Stock owned or held by them against any proposal (i) to amend the Certificate of Incorporation of Airspur or the By-laws of Airspur; (ii) to sell, lease, convey or exchange all of the properties and assets of Airspur or to merge or consolidate Airspur into or with any other corporation; and (iii) to approve or ratify any contract or act submitted for approval by the Board of Directors of the Company to the Shareholders of the Company."

Nearly a year after the execution of both the Purchase and Stockholders' Agreements, Airspur filed a petition seeking an arrangement under Chapter XI of the Bankruptcy Act, 11 U.S.C. § 701 et seq. That proceeding was aborted, however, and on August 31, 1970, the corporation was adjudicated a bankrupt and Jerome Lipper was appointed trustee.

Thereafter, various creditors filed proofs of claim, including the four claimants who bring this appeal: Bankers Trust Company, as a trustee ("Bankers"), Ohio Real Property, Inc. ("Ohio"),[2/] Mercantile Commercial Company ("Mercantile"), and K. R. Cravens Corporation ("Cravens"). The claims of the first three (Bankers, Ohio and Mercantile) [hereinafter the "Note Claims"] were based upon the 8% notes which they had previously purchased from Airspur under the Purchase Agreement. The fourth claim, filed by Cravens as assignee of International Jetstream Corporation ("Jetstream"), was for $370,768.84, the balance allegedly due and owing to Jetstream for three jet airplanes allegedly sold and delivered to Airspur.

In response, the Trustee filed "objections" in the nature of counterclaims against each of the claimants. The counterclaims directed to the Note Claims are essentially identical in substance. None of them denies the validity of the notes upon which the proofs of claim are based. Instead, the counterclaims describe a series of actions taken by Airspur beginning in late 1969, which are alleged to have resulted in "financial disaster and the bankruptcy of Airspur": the purchase for $3,500,000 of a moribund Caribbean airline; the giving of an unsecured loan of $1,000,000 to the financially unsound Jetstream; the sham purchase from Jetstream of three jets for $1,395,000; and the deposit of $92,000 with an English concern which had twice gone bankrupt. Each of the Note Claimants is alleged to be liable to the bankrupt estate by virtue of the Stockholders' Agreement, which gave them representation on the Board of Directors and certain indirect controls over Airspur's affairs. It is alleged that, although the Note Claimants and their representatives on the Board of Directors had notice that the four transactions listed above were unsound, they negligently failed to investigate the transactions adequately and failed to take any steps to prevent them from going forward. Each of the objections ends with a prayer that the relevant claim be disallowed and that the Trustee be permitted to recover the sum of $6,208,904 on behalf of the bankrupt estate.

The objection filed in response to Cravens' claim is

more limited. That objection, also in the nature of a counterclaim, alleges that Cravens was controlled by one Kenton R. Cravens, now deceased, a gentleman who also controlled Jetstream; that Mr. Cravens, together with one Warren E. Kraemer, a director of Airspur, arranged for two loans to Jetstream, totalling $1,006,850,[3] for which Airspur received promissory notes from Jetstream; that Messrs. Cravens and Kraemer subsequently arranged to make it appear as if Jetstream had sold Airspur three jets for $1,395,000, after which the Jetstream promissory notes were cancelled; and, that Airspur has never received title to or possession of the aircraft. The objection ends with a request that the Bankruptcy Court disallow Cravens' claim for $370,768.84 and enter judgment in Airspur's favor for $1,068,500.

Each of the six claimants moved for dismissal of the Trustee's objections, or counterclaims, on the ground that the Bankruptcy Court did not have summary jurisdiction to hear and determine them.[4] At approximately the same time, the Trustee instituted a plenary suit in the New York State Supreme Court against claimants[5] and twelve others,[6] alleging virtually the same matters as were set forth in the objections to the claims.[7]

After hearing oral argument on claimants' motions, the Bankruptcy Court rendered a decision denying claimants' motions to dismiss and finding that the objections were all cognizable under its summary jurisdiction. It is from that decision, relevant portions of which will be described below, that claimants

now appeal to this Court.

Discussion

As the Bankruptcy Court acknowledged at the outset of its decision, In the Matter of Airspur Corporation, 70 B. 577 (Bankruptcy, Aug. 29, 1974) at p. 5, summary jurisdiction over the Trustee's objections, or counterclaims, depends upon whether it can be said that the claims and objections arise from the same transaction or occurrence. 11 U.S.C. § 46(b); Fed. R. Civ. P. 13(a); Chase National Bank of the City of New York v. Lyford, 147 F.2d 273 (2d Cir. 1945). Claimants contend that they do not but that, even assuming that they do, the Bankruptcy Court should have declined to exercise its jurisdiction over the objections in deference to the state court where the plenary action is now pending.

It cannot seriously be contended that the Cravens' claim and the objection filed thereto do not arise from the same transactions--the loans from Airspur to Jetstream and the alleged sale of three jets to Airspur. On the other hand, this Court finds that the Bankruptcy Court was in error in holding that it had summary jurisdiction over the counterclaims filed against the Note Claims.

The Bankruptcy Court's holding that the Trustee's counterclaims against the Note Claimants were cognizable under its summary jurisdiction was predicated upon the conclusion that the

Note Claims and the allegations of mismanagement and fraud contained in the counterclaims arose out of the same transaction. The Bankruptcy Judge reasoned that:

> "By entering into the [Purchase and Stockholders' Agreements] of July 24, 1969 the claimants became far more than mere creditors of Airspur; they became ... its owners and managers of its business affairs as well." In the Matter of Airspur Corporation, supra, at p. 13.

The Court concluded that:

> "With authority must go responsibility, and the claimants cannot grasp the benefits of the former and simultaneously reject the burdens of the latter. By entering into the agreements the claimants became significant forces in the management of Airspur; and, as such, they are properly here for disposition by this court of the trustee's counterclaims."8/ Id. at p. 14.

The Bankruptcy Court's conclusion would appear unwarranted by the case law. In this regard, the analogous case of In re Majestic Radio & Television Corp., 227 F.2d 152 (7th Cir. 1955) is most instructive. In Majestic, a former director of the bankrupt corporation filed a proof of claim for money due and owing for goods, wares and merchandise sold to the bankrupt estate. The trustees of the bankrupt estate filed a counterclaim against him based upon allegations to the effect that the director had acted in violation of his fiduciary duties to the bankrupt. The question before the court on appeal was whether, by filing his proof of claim, the director had impliedly consented to having the Bankruptcy Court determine the counterclaim lodged against him. The Court of Appeals for the Seventh Circuit held

that determination of the counterclaim by way of summary proceedings would be improper. In so concluding, the court explained:

> "It is obvious that filing a claim in a Bankruptcy Court is an implied consent to summary adjudication by that court of any counterclaims based upon the subject matter of that claim. A litigant could hardly claim a recovery on the basis of a certain fact situation without permitting the court to decide all of the legal consequences of that situation. No party can invite summary adjudication on only part of the relevant evidence relating to the subject matter of the claim. If all of such evidence shows that each party is liable to the other the court will set off one claim against the other and render judgment for only any balance found to be due. In other words, if you invite a Bankruptcy Court to review a set of facts for your benefit, you invite it to review all pertinent related facts even though they should tend to prove your opponent's case. But it does not follow that by filing a claim a litigant has impliedly consented to the summary adjudication in the Bankruptcy Court of a counterclaim arising out of subject matter which has no relation to his claim." 227 F.2d at 156 (emphasis supplied).

If one applies that rationale to the instant matter, one can only conclude that the Note Claims and the counterclaims of fraud and mismanagement do not arise out of the same transaction or occurrence, so that the Bankruptcy Court has no power to decide the counterclaims on the merits.

The transaction upon which the Note Claims are based is the execution of the Purchase Agreement in July 1969. The counterclaims filed by the Trustee, on the other hand, are based upon a series of unrelated financial maneuvers which occurred after that agreement had been executed and performed. The reference in the

counterclaims to the execution of the Stockholders' Agreement, part of the Purchase Agreement, is little more than gratuitous. A careful examination of the counterclaims reveals that the reference is merely the Trustee's way of notifying claimants, mere stockholders of the bankrupt, of the basis upon which they are being sued for breach of fiduciary duty. Clearly, determination of the validity of the Note Claims will not necessitate any investigation into the facts alleged in the Trustee's counterclaims. To state it another way, the facts alleged in the Trustee's counterclaims have no relevancy to the question of whether the bankrupt is obligated to the Note Claimants on the Notes which they now hold. Viewing the matter from that perspective, the Court must conclude that the Bankruptcy Court's decision to retain jurisdiction over the counterclaims was not justified.

In deciding to retain jurisdiction over them, the Bankruptcy Court was apparently motivated by the fear that dismissal of the counterclaims would result in "multiplicity of suit at additional expense to the other creditors, and ... delay of administration as a reward to the claimants for the course of their dealings with this company and its financial affairs." In the Matter of Airspur Corporation, supra, at p. 15. However, from this Court's vantage point, prompt and efficient resolution of the allegations raised in the counterclaims is now less likely.

The Trustee alleges in the counterclaims that, over a period of a year, Kraemer and Cravens (identified previously)

took a series of questionable financial steps which resulted in Airspur's downfall. Claimants' liability is predicated solely on the fact that they and their Board representatives allegedly failed to supervise the actions of the two men. Neither of the prime movers is presently before the Bankruptcy Court. However, the two are named in the state action which is pending, together with claimants and ten others.[9/] Even if the Bankruptcy Court were to proceed to determine the merits of the counterclaims lodged against the Note Claimants, it would appear that the Trustee would still be required to prosecute its action in the state court against the others named in the complaint. Otherwise, there would never be any resolution of the entire matter.[10/] The simultaneous determination of the same controversy in two forums, which raises the possibility of inconsistent determinations, would be a waste of both the bankrupt estate's limited resources and the two courts' time. Under the circumstances, the wiser policy would have been to acknowledge lack of jurisdiction over the counterclaims and permit the speedy adjudication of the entire dispute in the state court.

Having determined that the counterclaims lodged against the Note Claimants should have been dismissed for lack of jurisdiction, it remains to be determined whether, under the circumstances, the Bankruptcy Court should have declined to exercise its jurisdiction over the counterclaim filed against Cravens, a matter which is clearly subject to the summary jurisdiction of

that court.

The situation here is not unlike that presented in the case of In re Wonderbowl, Inc., 456 F.2d 954 (9th Cir. 1972). After the bankruptcy court had dismissed a claim for fraud as to twelve out of fifteen parties, the three parties remaining before the bankruptcy court moved for a dismissal of the claim as to them in order to avoid multiplicity of suits. A plenary action involving the same issues was then pending. The motion was denied. On appeal, the Wonderbowl court noted that,

> "[a]lthough its use is properly confined to exceptional cases, 6 Collier on Bankruptcy Para. 3.08, pp. 468-69, a bankruptcy court has 'discretion to decline to exercise summary jurisdiction even where such jurisdiction is present.' [citations omitted]. Summary jurisdiction may properly be declined, for example, where complete relief cannot be afforded among the interested parties. [citations omitted]. Plenary litigation may be preferable where important questions turning on nonbankruptcy law are involved. [citations omitted]." 456 F.2d at 955-56 (emphasis supplied).

The court concluded that it would have been better had the bankruptcy court "dismissed [the proceedings before it] or at least stayed [them] pending completion of the trustee's plenary suit...." Id.

A similar approach is suggested here. The issues raised by the counterclaim asserted against Cravens, which revolve around the "sale" of three jets to Airspur by Cravens' assignee, Jetstream, are also integral to the claims set forth in the state complaint filed by the Trustee. Determination of all of the issues presented

in the plenary action will necessarily require their resolution. There is no reason why the Bankruptcy Court cannot stay final disposition of Cravens' claim pending resolution of the state matter.

In sum, this Court concludes that the Bankruptcy Court was in error in holding that it had summary jurisdiction over the counterclaims filed against the Note Claimants. Although the Bankruptcy Court was correct in holding that the counterclaim filed against Cravens was properly before it, that court should have declined to exercise its jurisdiction in view of the pendency of the plenary suit in state court.

Accordingly, the decision of the Bankruptcy Court, holding that it would retain jurisdiction over all of the counterclaims at issue on this appeal, is hereby reversed.[11/] The matter is remanded to the Bankruptcy Court for further proceedings consistent with this decision.

So ordered.

Dated: New York, New York
August 6, 1975

Charles E. Stewart
U.S.D.J.

In the Matter
of
AIRSPUR CORPORATION, a/k/a AIRCPUR NEW YORK,
Bankrupt.

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FOOTNOTES

1/ Chemical Bank, as trustee; Value Line Special Situations Fund, Inc.; Beechmont Company, as agent; and D. B. Glynn & Company.

2/ After Ohio had filed its proof of claim, L. J. Rauth, as trustee, was subrogated to the claim pursuant to an assignment from Ohio. It is Rauth who has actually appealed. However, Ohio has argued on this appeal, inter alia, that the Bankruptcy Court lacks jurisdiction over it with respect to the Trustee's counterclaim. In view of this Court's disposition on the appeal, determination of that matter is not necessary.

3/ The counterclaim filed by the Trustee against Cravens mentions two loans from Airspur to Jetstream: a loan of $100,000 and a second loan of $906,850. The reference in the counterclaim to the figure of $1,068,500 as the amount by which Airspur was damaged would therefore appear to be incorrect.

4/ Bankers and Ohio also moved for dismissal of the counterclaims on other grounds as well, but the Bankruptcy Court's memorandum decision does not address itself to the arguments they raised.

5/ Although K. R. Cravens Corp. is not named as a party, the executor of the estate of Kenton R. Cravens, deceased, is named in the suit.

6/ Chemical Bank, as trustee; Mercantile Trust Company National Association; Kraemer and nine other individuals, including the Note Claimants' representatives on Airspur's Board of Directors.

7/ The Trustee says that the suit was instituted to forestall any statute of limitations problem from arising in the event his counterclaims were dismissed by the Bankruptcy Court.

FOOTNOTES
ii

In the course of oral argument before the Bankruptcy Court, the Trustee requested permission to stay the action as to the claimants before it. A stay was entered orally on the record. (Transcript of April 5, 1973, pp. 85, 90-91).

8/ The Trustee has sought to bolster the Bankruptcy Court's conclusion by citation to a line of cases, see, e.g., Peters v. Lines, 275 F.2d 919 (9th Cir. 1960); In re Solar Manufacturing Corp., 200 F.2d 327 (3d Cir. 1952), cert. denied sub nom. Marine Midland Trust Co. v. McGirl, 345 U.S. 940 (1953); Florence v. Kresge, 93 F.2d 784 (4th Cir. 1938); In re Seatrade Corp., 297 F. Supp. 577 (S.D.N.Y. 1969), appeal dismissed sub nom. United Kingdom Mut. Steamship Assur. Ass'n v. Liman, 418 F.2d 9 (2d Cir. 1969), which hold that, where a creditor of the bankrupt files a proof of claim based upon a contract, the trustee may counterclaim in the bankruptcy proceedings for any claim it may have against the creditor arising under that same contract. It is the Trustee's contention that both the Note Claims and the counterclaims arise from the same contract, to wit, the Purchase Agreement, of which the Stockholders' Agreement is a part. The Court does not believe that those cases are applicable to the instant matter. Although the Note Claims arise from that twofold agreement, the counterclaims do not. See discussion in text, infra.

9/ See notes 5 and 6 supra.

10/ The Trustee indicates that if this Court sustains the Bankruptcy Court's order, he "will discontinue the action in the Supreme Court, New York County, and will proceed with the actions pending in the Bankruptcy Court." (Memorandum of Appellee Trustee in Opposition to Claimants' Appeal from Order of August 29, 1974, p. 27). If the Trustee's claims have merit, however, it is difficult to understand how he could discontinue that action in its entirety inasmuch as the two principals and others more directly involved in the events which allegedly caused Airspur to go bankrupt, not parties to this proceeding, are named in that suit.

11/ It should be noted that, in addition to moving before the Bankruptcy Court for dismissal of the counterclaim lodged against his, Rauth, as trustee, also moved for an order from that court granting summary judgment in Ohio's favor on its proof of claim. He seeks the same reliev on this appeal.

FOOTNOTES
iii

Since the Bankruptcy Court did not decide that motion, however, this Court does not feel that it is appropriate to decide that matter de novo at this time.